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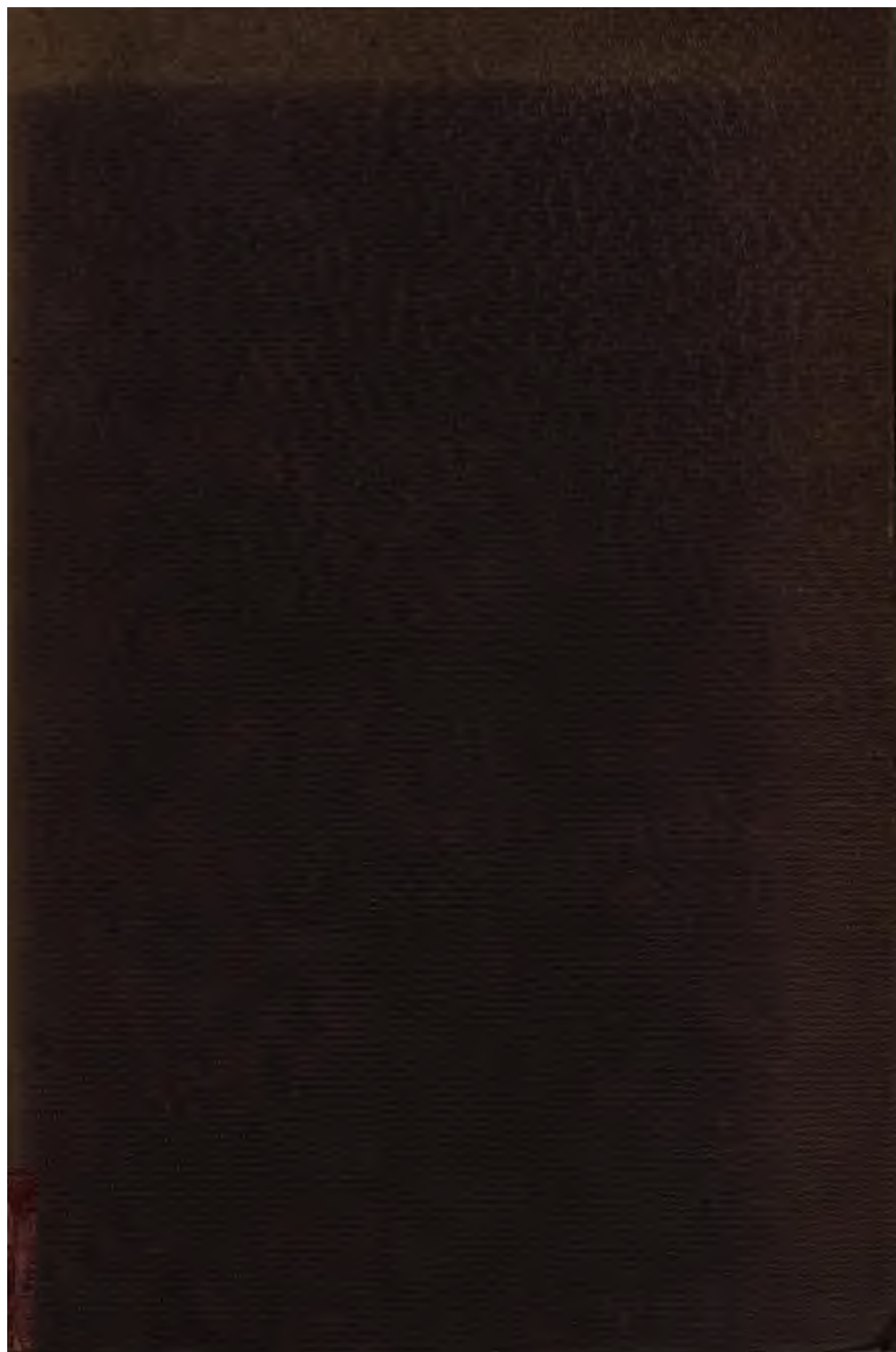
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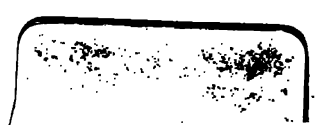
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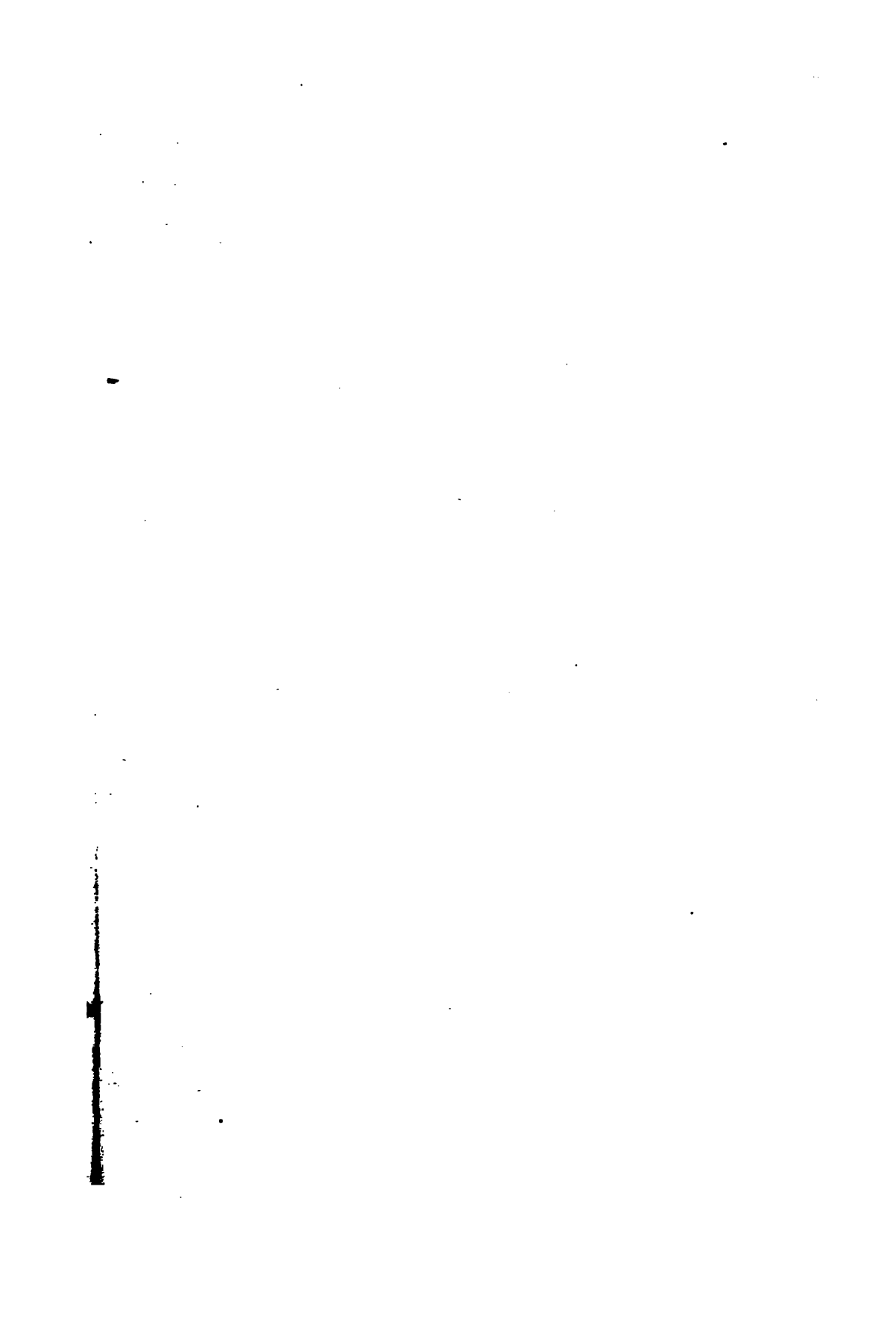
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UNDER THE SUPERINTENDENCE OF THE SOCIETY FOR
THE DIFFUSION OF USEFUL KNOWLEDGE

POLITICAL PHILOSOPHY

BY HENRY, LORD BROUGHAM F.R.S.

MEMBER OF THE NATIONAL INSTITUTE OF FRANCE
MEMBER OF THE ROYAL ACADEMY OF NAPLES

PART III

OF DEMOCRACY MIXED MONARCHY

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TO

CHARLES EARL GREY, K.G.,

&c. &c. &c.

This Volume, expounding the principles of Constitutional Polity that guided his brilliant and useful Administration, is Inscribed by the Author, in token of the friendship which has lasted during his whole public life, and of the veneration which, in common with men of all classes and all nations, he cherishes for a Statesman whose virtues have rarely been equalled, never surpassed.

P R E F A C E.

THIS volume forms the concluding portion of the Political Philosophy, as far as the great subject of Government is concerned. It comprehends also a full account of all the Constitutions in both ancient and modern times.

There is no other work in which the principles are systematically expounded, and none in which the various forms of Government are described. The discussion is kept quite free from all party and all national bias.

N.B.—The present half volume contains all the general principles of Democratic and of Mixed Government. The application of these principles to the several constitutions of Great Britain, France, America, and the Netherlands, will be published at Christmas, and will close the volume. The Structure of Government having been considered, to finish the whole course of Political Science, the Functions of Government will remain to be explained, including Political Economy and Political Arithmetic. But the work on the Structure of Government is quite complete of itself.

CHAPTER I.

OF THE NATURE OF DEMOCRACY IN GENERAL.

Connexion of the Subject—Definition of Democracy—Definition illustrated—Examples: America; England; Neckar's Republic; Athens—Purest Democracy—Ancient Democracies filled places by lot—Error upon Disqualifications—Term Democracy preferable to Republic.

WE have now examined the three great divisions of government: Absolute, or Eastern Monarchy—Constitutional, or European Monarchy—and Aristocracy. The tendency of the first is, as society advances, to become in some degree constitutional, though this has not often happened to any considerable extent. The tendency of the second is, with the advance of society, to become aristocratic, as happened to it in Sweden and Denmark, or to become aristocratic without any considerable social improvement, as in the Feudal Monarchies. It has also a tendency towards mixed or limited Monarchy. The abuse of the Monarchical form of government is Absolute Monarchy or Despotism. The tendency of Aristocratic Commonwealths is towards Monarchy, either constitutional or mixed; and their abuse is Oligarchy. Upon the ruins of either a Constitutional Monarchy or an Aristocracy, but more rarely of the latter, a Republican or Democratic constitution has frequently been built; and, again, an Aristocracy, as we have seen in the second part of this work, has frequently grown out of popular republics, both in ancient and modern times.—We now proceed to the examination of the two kinds of policy which remain to be considered, Democracy and Mixed Government—and first of Democracy.

This, as its name implies, is the government of the people, and of the people at large. The name is, therefore, preferable to

republic, because a republic may be aristocratic, as the Roman, most of the Italian, and some of the Swiss republics. It may even be Monarchical, as the Spartan and the Polish. But *Democracy* denotes the constitution which allows the superior power to reside in the whole body of the citizens, having never parted with it to a Prince, or vested it in the hands of a select body of the community, from which the rest are excluded.

In order to constitute a Democracy, therefore, it is necessary that the people should be either formally or substantially possessed of the supreme power, not sharing it with any other party independent of themselves, still less exercising authority subject to the control or revision of any other and independent body. I have said formally or substantially. If, as in the smaller republics of the old world, and in some of the smaller Italian and Swiss States of modern times, the whole people, without any preference of one class, or any distinction of ranks, make the laws by which the State is to be governed, and choose the magistrates by whom they are to be executed, then there is a Democracy in form as well as in substance; but if the whole people exercise the legislative power through deputies or representatives chosen by all, and either directly or by such delegates appoint the Magistrates, then there is equally a Democracy, the supreme legislative and executive authority being vested in the people. The making laws by delegation to representatives is no more an abdication of the legislative power in this instance, than the executing those laws by delegation to the magistrates is an abdication of the executive power in the case first put of a pure and formal Democracy.

Nor will the government cease to be Democratic, if a certain class of the people are excluded from direct power, provided that disqualified class is not prevented from becoming members of the qualified body. The United States of America have undeniably all of them a Democratic constitution, although there is in most of them an electoral qualification. If in England the Monarchy and the House of Lords were, unhappily, abolished, and the whole power of the state, executive as well as legislative, were vested in the House of Commons, it would be an abuse of terms to call the constitution aristocratic, although the elective franchise, and therefore the direct exercise of political power, would be confined to less than a million of persons—about the sixth part

of the community, that is, of males above twenty-one years of age, because the other five-sixths would not be excluded from admission into the qualified class. The very essence of an aristocracy is, that a class should exist endowed with the supreme power, while into that class admission is denied to the people at large (Part II. Chap. I.). When M. Neckar, in 1802, in discussing the question whether a Monarchy or a Democracy be the best form of government for France, concluded in favour of "a republic, one and indivisible;" he proposed a constitution which vested the elective franchise, both as to the legislative and the executive functions, substantially in a body chosen by persons of considerable property; for the qualification was the payment of 8*l.* a-year of direct taxes. Yet he deemed this a purely Republican Constitution.* No doubt there may be degrees of Democracy as of aristocracy; and a government may be termed most purely Democratic which is in the hands of all the males whose age gives them the right to be trusted by their fellow-citizens, just as the government may be termed most purely aristocratic that is vested in an hereditary body, all entrance into which is denied to every one else on any account whatever. Some of the Italian Republics gave the select or Patrician body a power of adding to their numbers. The Patrician body at Rome of old was constantly augmented by the admission of Plebeians officially. Yet it would be a great abuse of language to term these governments on that account Democratic. It would be equally erroneous to give the British Constitution on the supposition now made the name of aristocratic, as it would be to call the States of Carolina and Virginia, or of Attica, aristocracies because the slave population were excluded from all rights, and the political power, as well as all other authority, was vested in the free citizens.

We have seen (Part I. Chap. II.) that a Monarchical Government does not cease to be absolute merely because the Sovereign exercises his authority through certain functionaries, or certain Councils, appointed by himself. In like manner a government does not cease to be Democratic merely because certain arrangements are made by which the bulk or body of the people exercise

* "Dernières Vues de Politique et de Finance." Mr. Hume, in his "*Idea of a perfect Commonwealth*," intended to design rather a mixed republic, partly aristocratic, though leaning towards democracy. The substantial power was vested in persons of 20*l.* a-year in the country, and 500*l.* capital in the towns.—*Essays*, vol. i., p. 487.

the supreme power, although these arrangements should exclude a certain number of the poorer and more ignorant citizens. Such arrangements may be adopted for the purpose of giving effect to the genuine popular will and voice ; they may be used in order to prevent misgovernment and anarchy. Thus, if the community consist of a small body of well-informed persons, and a large body wholly illiterate, to give an equal voice in all affairs to the latter would be subjecting the councils of the state to the ignorance, imbecility, and incapacity of the community. Nor could we term it less a Democracy because its laws required every person to have a certain degree of knowledge, before he was entitled to exercise political power. It would not be an Aristocracy, because any one could become qualified, if he chose, for admission into the governing class.

It must, however, be granted that there is one difference between the case put and that of the Absolute Monarchy, administered by the Sovereign with Councils. These Councils are the creatures of his power and pleasure ; a breath from him can unmake as it made them. They exercise no direct control whatever over him, and only share his prerogative to the extent to which it pleases him that they should. Whereas the exclusion of a great body of the people, whatever be the ground of it, and however beneficial to the State, either on account of poverty or of ignorance and incapacity, leaves a superiority in one class over the rest, and prevents the excluded classes, a considerable portion of the people, probably their majority, from enjoying political rights, while their circumstances remain unchanged. Hence it must be admitted that the Democracy is more pure which allows of no such distinctions, as in ancient times at Athens, where every citizen had the power, equally with every other, of deciding upon the legislation and the policy of the Republic. The constitution was much the worse on this account, but it was also the more purely and entirely Democratic.

Indeed the more pure of the ancient Democracies, such as the Athenian, carried the equality of political rights, and the distribution of the supreme power in the state, a step further. They made a violent endeavour to counteract the natural aristocracy, not adopting the Spartan plan to prevent all accumulation of wealth, and thus cause its equal distribution, to preserve which is manifestly impracticable, but making arrangements which either

gave the selection of persons who should fill certain situations to chance, or establishing some kind of rotation in the succession to those situations. Thus the Senators at Athens were chosen by lot; and the presiding body, the Prytanes, took their place by rotation. The Heliaæa, or occasional grand council, was also composed by lot; and ten of the fifty Ephetæ, or judges in cases of homicide, were so chosen (Part II. Chap. xvii.). In the spirit of excessive distrust and jealousy which prevails with all Democratic governments, an additional security for the division of power was taken by the short period for which office was conferred. Except the Areopagus no places were for life; all were annual. Nor was the choice of magistrates by lot peculiar to Athens. It seems to have been deemed essential to pure and genuine Democratic government. When Herodotus describes the reasons given for the different forms of government by the Persians, on overturning the sovereignty of the Magi, he makes Otanes, who supported a Democracy, give as one of the characteristics, that all offices were conferred by lot.*

Now it would manifestly be most erroneous to consider the choice by lot of all or the greater part of the councils in a republic, an essential requisite of Democracy; or to consider a mixture of lot and rotation as such a characteristic. Such institutions, such contrivances of jealous distrust, might render the ancient Democracies more rigorously pure; but they never can be considered as indispensable to a Democratic form of government. A constitution may be in the ordinary sense of the term Democratic which falls very far short of such extremes; and so in like manner it never can be called mixed, much less aristocratic, with any propriety of speech, merely because a portion of the people is in point of fact excluded from direct power, provided there be no inseparable obstacle in the way of that portion becoming part of the ruling or privileged body.†

* Παλὴ μὲν ἀρχαὶ ἀρχῆν. (Thalia. 80.)

† A very respectable class of men in this country are exceedingly apt to fall into the error of confounding disqualifications and exclusions in fact, with disqualifications and exclusions in law. If a system were established which gave to all persons equally the right of voting for any important office-bearers, as parish officers or schoolmasters, the Dissenters object, because they would, in country parishes especially, be outvoted by the Churchmen. This is only because they form a minority. What they really seek is, that the minority should govern the majority, or at least that each class should choose one, which assumes that the office is to be held by two, and also that religious distinctions are to be perpetuated.

To avoid all confusion, therefore, it seems expedient to use the term *democracy* rather than *republic* for the government which is in the hands of the people. Republic does not really express this idea correctly ; it means commonwealth. Many writers have used it to designate a popular government, a government in which the supreme power is exercised by any portion of the people, as contradistinguished from monarchy. Thus, they divide republics into two classes—Aristocratic and Democratic, according as a portion or the whole of the people govern. But the name of a republic has also been applied to a monarchy, as in the case of Poland ; nor, indeed, could the principalities into which the Italian republics declined, and the mixed government of the United Provinces, though termed republics, be considered in any other light than as a species of monarchy. The term Democracy is free from all ambiguity, and stands plainly distinguished both from monarchy and aristocracy.

CHAPTER II.

ORIGIN OF DEMOCRACIES.

Origin of ancient Democracies obscure—Roman, Theban, Athenian, Carthaginian—
Modern Commonwealths — Italian, Swiss, Dutch, French, American — Popular
Government natural to Towns—Four Causes of this.

THE origin of Democratic governments in ancient times is involved unavoidably in great obscurity, and there is so much of fancy, so much indeed even of mere fable in the common accounts which national traditions have furnished of these as well as of ancient monarchies, that we are more likely to be misled than instructed by consulting them. Their details are absolutely to be rejected ; if we can safely lend them any credit, it must be confined to their most general outlines. Thus we may easily assume that the earliest government of Rome, as indeed of all communities, was a rude monarchy. We may also be safe in supposing that the kings had a council of the principal inhabitants, which was called a senate ; and there is no reason to doubt that the tyrannical conduct of the sovereigns occasioned a change of government, and the establishment of an Aristocratic, then of a Democratic, which soon became a mixed aristocratic, republic. But it would not be safe to trust the traditions which have been handed down of the particular incidents that attended the early revolution. We know still less of the change which at Athens substituted a Democracy for the original monarchy, or of the stages by which the archons succeeded to the kings, further than that upon the death of Codrus the power of the sovereign was much abridged, and the name of archon, or first magistrate, given to the king. But the particulars of the subsequent changes which made the office cease to be hereditary and become elective, lasting first for ten years, afterwards for a year only, are involved in complete uncertainty. Nor have we any accurate account of the de-

gree in which the government was Democratic before Solon's reforms, or the extent to which these reforms altered it. The probability is that the pure Democracy was only formed by degrees. The origin of the Theban or Bœotian Democracy is still more obscure; but it is not always that the ancient historians make so honest a confession of their ignorance as Pausanias does when giving an account of their kings. After enumerating sixteen who followed Cadmus, he says, that being unable to find any better account of them, he has taken his narrative from fable.* How the government became popular and aristocratic and oligarchical, we have not the least information. It never was Democratic except for a few years, when under the influence of Athens, and it generally took the part of Sparta against that Democratic republic. Of Carthage we know hardly anything for certain; and are still so little able to discover how the kings or princes that originally governed the colony, ceasing to rule, were succeeded by elective magistrates, called *suffetes*, that we are altogether in the dark as to the nature of the government even in the time of Hannibal and down to the Roman conquest; for though Aristotle's remarks upon it† (the only information we have) censure the constitution as being too Democratic, he also states enough to show that the supreme power was vested in select bodies, who only occasionally appealed to the people. But in what way this proceeding took place, how the senate were chosen, how long the office of the *suffetes* lasted, the nature of the senate, in what way the committee of one hundred were appointed, and how the pentarchy, or sub-committee of five, were named, which held their places for life till Hannibal made the office annual—all these things we are wholly ignorant of, and yet upon these the structure of the government entirely depends.‡

Our information respecting the origin of Modern Republics is, as might naturally be expected, much more full. We can with sufficient accuracy trace the changes which have substituted

* Οὗτοι πδυναμην παρδευεν. ιστομαι το μυθος, lib. ix. c. v.

† De Rep., lib. ii. c. xi.

‡ The obscurity in which the prejudices and dishonesty of the Roman historians have left us on all that relates to Carthage, is infinitely discreditable to them, and fully warrants the suspicion that the Carthaginian superiority, in almost all respects, was the cause of this jealousy. An able and judicious discussion of this point is to be found in Mr. Wortley Montague's work "On the Ancient Republics," chap. vii.

popular for monarchical government, both in Italy and in Switzerland; the extension of Democratic power in the cities, principally as commerce increased; the subsequent establishment, first of Aristocratic and afterwards of Monarchical Government, in the Italian states, with the exception of Venice, where the aristocracy was only subverted by foreign conquest; and the introduction of the aristocratic polity into several of the Swiss republics. These things have been fully explained in the former part of this work (Part II. Chap. XIX. to XXVIII.). The revolution which separated the Netherland states from the Spanish monarchy, and led to the foundation of the Dutch republic, belongs to a still more recent period of history, and thus we are accurately informed of the origin of that mixed Democracy. Those Republics, however, were never purely Democratic, nor even approached near to that model; none of them continued for any great length of time to preserve such portion as they had of the Democratic polity; and all of them were commonwealths of a limited extent. It was reserved for our own times to see the experiment of a Democracy tried both upon an extensive scale and in all the purity of the popular principle. The two great countries of France and North America have exhibited this spectacle, so interesting to political inquirers. In the former the duration of the Democratic polity was confined to a few years; in the latter it has lasted above half a century, without affording any just ground of alarm as to its continued endurance; and the particulars of its origin, as well as all the details of its structure and functions, being so well ascertained, the constitution of the United States presents the most instructive of lessons to the political student.

Although the origin of the ancient democracies may be unknown to us in detail, we may nevertheless rest assured that in almost every case the first form of government was Monarchical. In each state it probably began with the patriarchal authority of the head of the family, extended afterwards to the more skilful and experienced warrior of the tribe (Part I. Chap. III.). Either the authority of the chief was feeble, from the weight of his competitors and the influence of his council, which ended in a mixed government, then in an aristocracy; or by exciting resistance to his tyranny he occasioned a change of government and the admission of the chief men to a share, sometimes to the whole, of the supreme government. In some cases by slow degrees, in others

by more sudden revolutions, the bulk of the people displaced the select body, and made the constitution Democratical ; and sometimes, though in all likelihood much more rarely, the transition was at once made, as at Rome, from the Monarchical to the Aristocratic and Democratic polity.

We may however be sure of one point, Democracy is much more natural to towns or cities than to country districts ; and here it may be observed that in general popular governments, either on the Aristocratic or Democratic model, have at all periods of the world been more usually established in the towns than in the country. So it was in old times, when the republic was a town with the neighbouring territory subjected to its citizens, either a select body or the people at large. So it was in modern Italy, as we have seen already (Part II. Chap. XIX. et seq.). But so also to a certain degree it was in the Feudal Monarchies north of the Alps, the civic corporations having much more important franchises and privileges than the inhabitants of the cotuntry districts (Part I. Chap. IX. XII. XIX.).

The causes of this difference are sufficiently obvious from the circumstances of the people in the towns. In the *first* place, the wealth which is accumulated in the hands of traders and mercantile men gives rise to independent sentiments and to a dislike of the arbitrary power which places that wealth in jeopardy, and to a sense of personal importance, which leads, by a very direct and very short road, to a desire of sharing the chief power in the state. *Secondly*, the constant intercourse of society in towns has, independent of the wealth and the occupations incident to them, a direct tendency to civilise the inhabitants, and to beget discussions of rights and of policy inconsistent with an entire exclusion from the management of the national concerns. *Thirdly*, the proximity of residence and the daily meeting together, gives to the townsfolk great facilities of combination and of resistance which the inhabitants scattered over the country cannot in any degree possess. As against a prince, each person living alone is wholly powerless, and combination is so difficult, that we see, even in an advanced stage of society, when the towns-people are everywhere combining for their real or supposed interests, sometimes in direct opposition to the interests, real or supposed, of the country people, the latter hardly ever unite, even in self-defence, and can with the utmost difficulty be prevailed upon to manifest

their numerical force in support of measures for their separate interest. *Lastly*, and chiefly, there is a great facility given to holding popular assemblies, and thus allowing the people a just share in the government, when they live together, as in towns, while the collecting of country people is plainly impossible. The whole people of a town may be assembled together; if the town is not large, the whole inhabitants may conveniently and frequently hold really deliberative assemblies on public affairs—a thing altogether impossible for the people scattered in the country to attempt.

For these reasons it is that we may confidently affirm the superior adaptation of towns to popular government; and hence the Republican regimen, either Aristocratic or Democratic, has more frequently prevailed in them than in country districts.

CHAPTER III.

NATURAL LIMITS OF PURE DEMOCRACIES.

Limits to Popular Assemblies—Calculations of Numbers—Paradoxes of Authors—
Montesquieu, his merits and defects—Two strange Positions of his—Millar, his speculative Errors—True relation of Government to Territory.

As long as the Democratic principle is kept pure, unmixed, and uncontrolled, that is as long as the supreme power is exercised by the whole body of the people, it cannot be applied practically to a large community. In order that the government may be carried on by the people, it may not be necessary that they should perform each act of the supreme or controlling administration, that is, issue the necessary orders to the tribunals, to the tax-gatherers, or to the commanders. This control or general superintendence may be devolved upon a council more or less numerous ; it may even be entrusted to a single functionary, or two, as at Rome ; and provided they hold their office only for a short period, the democracy is still pure, just as it is pure though justice is administered, taxes collected, and troops commanded, by persons entrusted with these high functions. But the power of making laws and of choosing the administrative council, or functionaries, resides in the people, and can only be exercised by themselves. It is not necessary that they should appoint the judge, the tax-gatherer, or the captain ; but they must choose the council or the functionary by whom these appointments are to be made. Then, whether they are to assemble for each act of legislation, and also for each administrative act, or only for the more important legislative measures, and the general administrative superintendence, their assembling and frequently assembling is essential to their retention of the supreme power in their own hands ; and they cannot assemble in very large numbers, unless their meeting is a mere pretence,

because the coming together for the purpose of exercising the highest political offices, the making of laws, and the conduct or control of the public affairs, implies great deliberation and the full discussion of the subjects propounded.

If the young men are excluded from such meetings, 13 in 51 of the population being under the age of 20, it follows that of every 100 there must meet 38 ; consequently a district of 20,000 must produce a meeting of 7600 persons, or, allowing for accidental absence, between 6000 and 7000. Such accordingly were the numbers of a full assembly at Athens, and consequently there was rarely any very mature or useful deliberation in the conduct of the business, nor anything like order, even of decorum, preserved. How other provisions in the Athenian constitution, and how habits of procedure, tended to afford some compensation for the evils of this multitude having the substantial control of state affairs, we have explained at large in a former chapter (Part II. Chap. XVII.). But had the meetings been more numerous, it is hard to conceive how any checks could have proved efficacious ; and even if they could, to assemble a greater multitude was physically impossible. Even supposing a place contrived so that 10,000 men can meet in it, this must be admitted to be the very greatest assembly that can be held, because the human voice can reach no further than a certain small distance, and we know practically that there is a great and painful effort required to make a person heard by so many as 10,000. This, according to the above calculation, answers to a population of only 30,000 ; consequently, the utmost extent of territory the government of which can be administered by a pure democracy is one having 30,000 inhabitants, or a town of third or fourth rate. For such capitals as London or Paris it would manifestly be impossible ; but even for Edinburgh or Manchester it would be out of the question, for there the popular assemblies would consist of 40,000 or 50,000 individuals.

All writers who have treated on this subject have agreed, as might be expected, that these considerations affix a necessary, indeed a physical, limit to the extent of a country governed by a pure Democracy. But it could hardly be expected that love of paradox should so have blinded some, and proneness to theory so far have misled others, as we find proved in the works of some very eminent authors. It may be instructive as well as amusing to give one or two examples.

Montesquieu * gives the reasons why different forms of government are suited to different extents of territory, and why, indeed, these can only exist in territories of such extents. A republic must have a small territory, a monarchy one of middle size, a despotism one of great extent; and to this rule he admits only of one exception, that of the Spanish dominions, for which he accounts by referring to the peculiar circumstances of their position. To pass over the contradiction which this theory at once receives from the examples of Great Britain and Austria, but still more from the despotic governments established in the petty states of Africa on the Mediterranean and Red Sea, as well as in some of the Eastern countries, we may observe, that his doctrine being perfectly true as regards one of his positions, the limit to republican government, his explanation is extremely curious from the care with which he avoids the true reason, as it should seem, merely because it is the obvious and natural one, and because he never can resist the temptation to say what is far-fetched, and striking, and surprising, rather than what is true and near at hand. He assigns three reasons why a republic must have a narrow territory; *first*, because in an extensive country great fortunes are accumulated, and men become independent of the state, and raise themselves on its ruins; *secondly*, because in a small community each individual feels a stronger interest in the public prosperity, and abuses of public trust become more difficult; and, *thirdly*, because, if the republic be extended beyond a single town, some chief or prince would endeavour to oppress the people, and would be either dethroned or conquered.

Now, it is difficult to conceive anything more absurd than stepping over the true and plain reason which lay at his feet and before his eyes, in order to run after these three causes, two of which, if they operate at all, work but little to the purpose, and the third seems to have rather a conservative tendency. The true and the plain reason is that which I have assigned, the impossibility of the people acting, that is deliberating, in more than a limited number, and the consequent impossibility of a large community governing itself on the popular model. The reason why extensive empires must be despotically governed is stated to be that firm and vigorous government may supply the want of authority which distance occasions. But the instance of the Roman Empire, and the British

* *Esprit des Loix*, liv. viii. ch. xvi., xvii., xix., and xx.

Empire, and the Venetian Empire, are decisive against this argument, which indeed proceeds wholly upon the gratuitous assumption that no great vigour can exist in any limited form of government. The discussion is closed with a dogmatical assertion, that in order to preserve the three several principles of republic, monarchy, and despotism, it is necessary (he seems to say, only necessary) to preserve the extent of territory suited to each, but that in proportion as this extent is altered, either by increase or diminution, the principles of the government are changed; a proposition as contrary to the known facts as it is unsupported by any consistent or intelligible reasons.*

The other instance which I am to take of men being misled by a love of theory, is that of the late Professor Millar, a man of very strong understanding, well disciplined by study, and above all by legal study, though never by having either practised as a lawyer, or borne any share in public affairs. He was, however, in all respects a very different inquirer from the French president, and had a

* Exception has sometimes been taken to this work as evincing a disposition unjustly to underrate the *Esprit des Loix*. No writer can be himself deserving of confidence who fails to acknowledge the obligations due to Montesquieu's celebrated treatise as having greatly promoted the philosophy of jurisprudence, and, indeed, almost introduced philosophy into the discussions of jurisprudence. But the faults of the work are numerous, and they are great. If it sets a good and valuable example of treating the subject scientifically, it executes the design most imperfectly; for the main pursuit of the author is certainly not truth. To strike, to dazzle, to fill the ear with epigrams, rather than to instruct, is the great object; and hence everything is sacrificed to paradox and to point. Some parts of the work—the latter portion—where the Feudal law, and the French law especially, is discussed, present a strange contrast to all, or almost all, the rest, and simply because the author best understood his subject, and, addressing lawyers on practical matters, was in some sort compelled to regard the substance and the truth of his doctrines rather than the glitter or the glare of his sentences. The want of a sound judgment seems to have been the prevailing defect in this able, and lively, and indeed learned author. How could any very sober-minded and reflecting man fall into such gross errors as we find scattered thickly over the book, even when he comes to details, and to individual cases which should at once have opened his eyes to the errors induced by theory? Thus, in a single book (liv. xx. chap. xv., and xxiii.) we find these two astonishing positions; that a law of Geneva was most admirable which excluded from public office the son whose father died insolvent, until he had paid his debts,—a law of the grossest cruelty and most revolting injustice; and that a country like Poland, which has only one kind of produce—grain—must be injured, and not benefited, by foreign commerce. Certainly nothing can exceed such revolting absurdity. Perhaps it is a similar instance of unsound judgment that gave us such a chapter as this, entitled “*Moyens très efficaces pour la conservation des trois principes*,” and the whole chapter consists of a line or two, stating that the reader cannot comprehend it until he has read the next four chapters.

mind of a much more vigorous and manly cast, although he was apt to run riot in speculation, as we shall more fully perceive when we come to examine his 'History of the English Mixed Government.'

Mr. Millar, in treating of the Commonwealth in the seventeenth century, disputes the position that Democratic government is only applicable to small states or single towns. He conceives this error to have arisen from attending only to the history of the ancient republics; and he lays it down as clear, that a republican government is adapted to the two extremes of either a very small or a very great nation. By republic he means, as indeed we have frequently done in this discussion, a commonwealth without an hereditary chief magistrate, or a chief magistrate chosen for life, and therefore a commonwealth, whether on the Democratic model or the aristocratic. The reason which he gives for his position is wholly unsatisfactory; as, indeed, the position itself is contrary to all experience, and at variance with all sound theoretical principle. In a small state, he says, the revenue falling short of half a million sterling is insufficient to maintain a monarchy. How large, then, were the revenues of the Italian and German principalities? and how few of them had anything like the income which he thus deems insufficient? Again, he considers the great revenues of a large empire as so incompatible with liberty, that the people in self-defence must endeavour to overthrow the monarchical or despotic power. We must, however, observe that Mr. Millar avoids the error into which Montesquieu fell, by laying down his theory as one suited to the facts actually existing. Mr. Millar gives his doctrine only as affirming the better adaptation of the one form of polity or the other to the several extents of territory. The only further remark, therefore, which remains to be made upon it is that the growth and existence of so many monarchies and despotisms in small commonwealths, and so many also in large communities, affords a strong presumption against the practical soundness of his reasoning.

We may conclude this discussion with stating the only sound general principle which can be laid down safely upon the relation between the nature of government and the extent of territory or population in any given country. We may safely affirm that a Democracy, on the purest or antique plan, cannot exist but in a

small community ; that an aristocracy may have place in much more extensive countries ; but that governments of every description may exist, and for a great length of time, in a narrow country, and that monarchical and despotic governments may with equal ease continue their existence in extensive countries. The impossibility of the more pure Democracy existing in a community of considerable extent seems to be the only point which fact and reason alike authorize us to consider well established. It is in vain to confine more closely, as Montesquieu has done, one kind of constitution to one extent of territory.

CHAPTER IV.

EXTENSION OF DEMOCRACY—PROPER FEDERAL PRINCIPLE.

Devices to extend Democracies—Three of these—Bœotian Federacy—Lycian Union—United States—United Provinces—Swiss Federacy—Swiss Democratic Cantons.

As the territory or the population of a country subject to Democratic government becomes increased by the conquest or the union of other dominions, the difficulty of assembling the people to consult and determine renders some change in the government necessary, or some arrangement by which, the government remaining the same, it may become capable of administering the concerns of the extended community. Now there will always be a great reluctance to change the government; and although foreign conquest, at once making the Democratic regimen more difficult, and raising some successful captain to an overpowering influence in the State, may occasion the alteration of the former system, and the adoption of a monarchical constitution, this is not by any means the event most likely to happen; and it has, accordingly, very seldom been the result of such an increase in the number of the people as we are supposing. The continuance of the Democracy is more likely to be effected by subdividing the enlarged territory into districts, each of which is of the moderate extent required for Democratic government, and having a central council to control the whole; or, secondly, by uniting the new acquisitions with the old dominions, each retaining its Democratic constitution, and independently and absolutely managing its own internal concerns, but all governed in respect of matters concerning the whole union by a central body; or, thirdly, by excluding the inhabitants of the new acquisitions from all share in the administration, and holding them subject to the inhabitants and the government of the old Democracy. The first plan cannot be said, strictly speaking, to constitute Federal Government; it is rather one polity stretching undivided over the whole community; the

second is Federal Government, strictly so called ; the third is an usurpation of power over conquered settlements by a Democracy, and has no affinity to Democratic government, but is in reality a despotism in which the monarch is not one individual, but the people of a commonwealth. The second is what we have in a former chapter termed the proper or perfect federal union ; the third is one species of the improper or imperfect federal union—that, namely, in which the control is vested in a central Democracy, and the internal government of the dependencies, as well as the common concerns of the whole union, are in the hands of that central democracy (Part I. Chap. xv.).

Of the two first kinds or subdivisions of the federal union the most commonly adopted has been the second ; the first has rarely been established ; and of the second, in the few instances which there have been of it in ancient times, we have very imperfect accounts. The principal one of the first kind was that of Thebes, or rather Bœotia, which is, however, generally represented as having been a federal union of the second kind—that is to say, a league of which each member governed its domestic concerns, independently of all the others, and only sent deputies to the general congress or council, which administered the common concerns of the whole confederate or allied body.

Our information respecting this League, and, indeed, respecting anything that regards Bœotia, is so scanty, that I speak with becoming caution when I thus venture to represent the constitution of the League as of the first kind. My opinion is grounded, not upon the great preponderance of Thebes over the other ten cities, for that was a feature common to all the Greek confederacies, but upon the peculiarity of the diet or central council being a permanent body, in which each city had one Bœotarch to represent it, and Thebes two, and upon the existence of four councils which prepared the business that came before the diet.* In other confederacies the diet met only once or twice a-year ; and it is inconceivable that the mere affairs common to the whole League, such as questions of peace and war, and alliance, could occupy them permanently and require a constant meeting.—The Asiatic settlement of Lycia appears also to have been governed

* Thucydides, in mentioning the Bœotarchs, speaks of four Councils (*βουλαι*), and assigns to the Bœotarchs and Councils the *Ηγεσι*, or supreme dominion, lib. v. 38. There were, according to him, eleven Bœotarchs ; but Thebes probably had two, lib. iv. 91.

in this manner; for its twenty-three cities being represented in a congress by numbers of votes proportioned to their several importance, this congress or diet appointed the magistrates of those several cities, an arrangement wholly inconsistent with the second or more complete kind of the proper federal union.

To this second kind belonged all the other Grecian confederacies, and probably those of ancient Italy prior to the Roman conquests; but respecting these we have hardly any information at all. The modern federal unions have been of the same description; those of the Dutch United Provinces, the Swiss Cantons, and the American United States.

The great American Federacy was, as we are well aware, established with the design of enabling the democracy the more easily to extend over a vast community, and also to preserve the rights and independence of the several states in their domestic concerns.

In the United Provinces the several members of the union were governed in their domestic affairs by a federacy also, of which the towns were the members, except in Friedland and Groningen, where the country had votes in baillages to choose the town council. But in every province a central council or body, the Provincial States, resided in the chief town, and administered the concerns common to the whole provincial union, each member of which administered its own affairs independent of all the other towns and of the Provincial States. That central body, the Provincial States, stood in the same relation to the different towns in which the States General stood to the Seven Provinces and their several Provincial States. This certainly affords the most perfect example anywhere to be found of the Federal Union, and it was manifestly contrived for the purpose of enabling communities more extensive than could be governed by a democratic polity to enjoy the benefits of that system. For originally the constitution of these provinces, and of the towns in each, was democratic, the governing bodies being everywhere chosen by the burghers at large. But early in the seventeenth century the councils, with the consent of the people, as it should seem, became self elected, and the constitutions assumed an oligarchical form. In administering the affairs of these unions, and indeed of each province, great practical inconvenience was always found to result from that provision of the constitution

which gave to each member of the unions, both general and provincial, a *liberum veto*, or absolute negative, upon all resolutions regarding peace and war, alliances, and taxation. This was introduced, like all the other arrangements of the government, by the jealousy common to all democracies.

We have already seen (Part II. Chap. xxviii.) in examining the Swiss Aristocracies, that the Democracy originally prevailing in the three great cantons of Lucerne, Zürich, and Bern was afterwards changed into an Aristocracy of the oligarchical kind, and that the whole country in each canton was subject to the government of the council in the capital. We found, however, that the act of mediation in 1803, and still more effectually the new constitutions of 1814 and 1816, admitted the country districts to a share in choosing the central council; so that the present government in each of these cantons falls within the description to which there is reason to think the governments of Bœotia and Lycia belonged.

But the Swiss Confederacy had members which retained to the end their original Democratic constitution, and have it established to this day. The three small cantons of Schweiz, Uri, and Unterwalden, called the Waldstätten, or Forest Cantons, with Glaris, Zug, and Appenzell, have ever been governed upon the most pure Democratic model. The cantons of the Grisons and the Valais, which were formerly only allies of the Swiss Confederacy, but since the new arrangement of 1815 are members of it, have also always had a Democratic constitution, although less purely upon the ancient model than the other six cantons which I have just named. These six formed part of the ancient confederacy, which never assumed so regular a form as the Dutch, having only occasional assemblies of the Diet, a meeting of deputies without officers or funds of its own as a substantive central government. In each state the government is entirely in the people's hands, and none of them are too large to render their meetings absolutely impossible; though as all above sixteen years of age attend, and as Appenzell has fifty thousand inhabitants and Glaris thirty thousand, much larger assemblies than are consistent with convenience are held, sometimes as many as eight thousand attending, nor could anything render them, in Appenzell at least, consistent with the public peace, but the simple habits of a people of shepherds and husbandmen, among whom political dissensions

never have prevailed. In the Grisons and Valais, in each of which there are too many inhabitants for a pure Democracy, a different course has been found necessary, and it is exactly the application of the Federal principle. The Grisons, having eighty-five thousand inhabitants, is divided into sixty districts or cantons, each of which administers its own affairs, like the Dutch towns, and, like them, sends a deputy to the general diet of the country. There is less of a pure democratic spirit and aristocratic influence here than in the Valais, where of the ten districts (or *dizaines*) six are purely democratic, and the people entirely govern themselves. The other four are aristocratic. All the ten are represented by deputies in the Diet; and the Diet of both Grisons and Valais send deputies to the central federal body. Thus each valley in these two cantons has its separate popular government, generally on the Democratic model, and the whole are ruled by a central diet, which again is represented in the General Federal Council.

Having in a former chapter (Part I. Chap. xiv.) discussed at length the subject of the Perfect or Proper Federal Union, and having in another chapter (Part I. Chap. xv.) discussed the subject of the Improper or Imperfect Federal Union, it is unnecessary to enter into that inquiry in this place.

CHAPTER V.

EXTENSION OF DEMOCRACY—IMPROPER FEDERAL PRINCIPLE—
ROMAN POLITY.

Roman Provincial Polity instructive—Conquests kept subject—Provincial Government—Subjection of Inhabitants—Their partial admission to privileges—Municipia or free towns; their Government—Colonies—Oppression of the Provincials—Social War—Admission of all Italy—Exclusion of Cisalpine Gaul—Exclusion of Provinces relaxed under the Empire—Universal admission of the Provinces—Elective Measure of Augustus—Influx of Provincials into Rome.

THE Roman polity was framed upon the third of the plans which have been mentioned; they reduced the government of the capital to an aristocracy which enabled the rulers to conduct its affairs without constant appeals to unwieldy popular assemblies; and the capital, the city itself, and the district in its immediate neighbourhood, governed the provinces in Italy, and the foreign dominions of the Republic, without giving any share whatever of the supreme power to the inhabitants of those provinces, or suffering their voice to be heard in the choice of the functionaries to whom the government of the whole was entrusted. It is exceedingly instructive to examine narrowly the Roman provincial policy, because it shows to what various devices the Republic was driven in order that it might be enabled to extend its dominion, while its constitution remained unchanged. It also illustrates in a striking manner the grand difference between ancient and modern policy, introduced by the happy contrivance of representation.

When the Romans conquered any portion of the neighbouring territory, and gradually in the course of five centuries overran all Italy, they found a rude form of government established among the inhabitants, who either lived under petty chiefs or under a republican constitution, and, generally speaking, formed confederacies or unions, each town retaining its independence in all its domestic administration, but several joining together under a

common chief, or common council, in all that regarded alliances and warlike operations. The number of troops which some of them, as the Samnites, could bring into the field, 80,000 men (Part I. Chap. XIV.), manifestly shows that they must have lived under a federal government. The first thing which the conquerors did upon overpowering any league was to destroy this union altogether, allowing no councils nor any assemblies whatever of the people to be in future holden. They permitted no alliances, of course, to be formed with other tribes; and they strictly prohibited even the intermarriage (*connubium*) of the inhabitants of the conquered district with those of any other. If the people were sufficiently advanced in civilization to have any public lands, the domains of the prince or of the state, these became the property of the Roman Government; and, beside these, a considerable portion of the lands in private tenure was confiscated. The lands thus acquired were parcelled out among poor citizens of Rome, or given to colonies of Romans, planted there for the purpose of overawing the natives. The state derived no revenue from such lands except in Campania, having very early given up all right to rent from either colonists or paupers. The only direct tribute imposed upon the conquered people was a tax of one-twentieth on the sale of all slaves; for slavery in Italy, as everywhere else in the old world, was universally established. They were allowed to retain their own laws, their own form of government, and their own magistrates. No governor was sent from Rome; nor did the consuls and senate exercise any authority except in matters of peace and war, and alliances. Within this exception came the important article of troops, which were furnished for all the wars of the Republic, and were paid,* as well as raised, by the conquered districts. It is agreed on all hands that at first the yoke thus imposed was not a heavy one. The politic Romans, while they were carrying on so many wars, felt the necessity of conciliating the people of their successive conquests. It was not till the sixth century A.U.C., and after the successful termination of the Second Punic War, when all Italy had been completely subdued, that the oppressions of the crafty and cruel conquerors began to be universally felt all over their dominions.

* This consideration, as Beaufort well observes (Rep. Rom., liv. vii. c. i.), explains the passage in Livy (lib. viii. c. viii.), where he calls the *Latini stipendiarii*.

The inhabitants of the conquered districts were considered by the haughty Romans as an inferior race, and were excluded from all the privileges of Roman citizens. They were not allowed to intermarry with Romans, nor to dwell in the city, nor to hold any offices, nor to have any voice in elections, nor to enjoy any intercourse of sacred rites. Even the numerous levies which they furnished to the army were marshalled in separate and auxiliary legions, not incorporated with the Roman troops. Such was the general rule ; but after the Gallic invasion an exception was made in favour of Cære, whose inhabitants had rendered important services in that disastrous campaign. About the year 363 A.U.C. they were admitted to a certain portion of civic rights. The privilege of voting, however, or of filling offices, was withheld. The admission to civic rights of foreigners, or barbarians, as the barbarous Romans were pleased to call them, being once begun, was extended to other cases. Ten years after the Cerites, the Tusculans were admitted. In 415 A.U.C. Aricia, Lanuvium, and some others, were admitted, with the right of voting ; and, therefore, of being enrolled in tribes and centuries at Rome : while some towns, as Fundi and Cumæ, admitted to citizenship in the same year, only obtained the suffrage in 565. The Sabines were partially admitted in 463, and completely in 485. When the suffrage was conferred, the voters were dispersed over various tribes, in order to neutralise their influence. Thus the nine towns of the Veneti were enrolled in nine of the tribes.

But all the privileges thus granted were confined to particular provincial towns. No district, except a portion of the Latins, enjoyed it generally ; and these Latins always had greater privileges than the other Italian states, even after civic rights were generally extended. The colonies planted among them were governed by their own, and not by Roman magistrates ; they had a community in certain religious rites with Rome ; they always had the suffrage after holding any Latin office. The rest of the Italian nations were treated altogether as aliens, with the exception of the towns enfranchised or naturalised, as has been mentioned, and with another important exception, that of the free towns or *municipia*. These varied in the privileges granted ; some having the whole, others only part of the rights of citizens ; some having their own laws, with only the addition of those portions of the Roman law which governed marriage, wills, and contracts ;

others being wholly under the law of Rome.* They generally framed their government upon the Roman model, changing the names of their functionaries. Thus their senators were termed *decuriones*, their consuls *dunmviri*, or *quatuorviri*; their censors *decemviri quinquemales*; their tribunes *defensores publici*. They had three orders like the Romans, senators, equites, and plebeians. In many of them the officers were elective, and the people assembled in comitia to choose them as well as to adopt or confirm the laws which were propounded.

The colonies were planted by Roman citizens, and continued under magistrates sent from Rome, except only those in Latium, which chose their own. The colonial inhabitants, however, ceased to enjoy any votes in the capital, or to be capable of holding any offices there. They were governed entirely by the Roman law, and appear to have been regarded as citizens in all respects, except the suffrage and holding of magistracies. The policy of planting these colonies as advanced posts to maintain their conquests was early adopted by the Romans, and continued to the end of the empire. Fidenæ, one of the first planted, was not above five miles distant from Rome. Before the sixth century they had planted fifty-three establishments of this kind in Italy.

With these exceptions, manifestly introduced for the purpose of strengthening the Roman dominion over the conquered nations, no Italian people enjoyed any Roman immunities or privileges whatever; all were treated as a conquered and as an inferior race. This treatment they bore for two centuries after the whole of Italy had been subdued. They had served in the Roman armies the whole of this time, and afterwards in their foreign conquests. They had formed the great bulk, indeed, of those armies; for in the year 528 we find that of the whole force, 700,000 infantry and 80,000 cavalry, only 250,000 of the former and 25,000 of the latter were Roman. Yet the treatment they received before Italy was subdued had been mild, compared with the cruelties and insults to which they were afterwards exposed. Roman magistrates in their progress through those countries set no bounds to

* Those which retained their own jurisprudence sometimes partially adopted the Roman law of their own free will; and if they did, the municipality was termed *fundus*,—*quoad* the law so adopted. Certain portions of the Roman law all were compelled to adopt (those, namely, mentioned in the text), on obtaining the *civitas*.

their insolence and their exactions ; the most respectable inhabitants were treated with gross indignities at the caprice of those tyrannical republicans ; their public functionaries were sometimes flogged in the presence of the multitude ; to punish some imagined neglect, a whole state or kingdom was confiscated ; even private individuals, proud of the title of Roman citizen, have been known to flog a provincial to death on the highway for some real or imaginary want of due respect towards the sovereign people. This tyranny, all springing from their inferiority as being excluded from the rights of the state, the Italians bore for centuries, and at length revolted. They joined in by far the most formidable league ever formed to curb the haughty republicans ; and bringing an army of 100,000 men into the field they threw off the Roman yoke, forming themselves into a great confederacy, the capital of which was Corcova. An edict of the consuls Crassus and Scævola, A.U.C. 658, was the immediate cause of the revolt. It expelled all Italians as well as other strangers from Rome, unless such as had obtained the rights of citizenship (*civitas*). The allies were successful during the first of the two years that this social war lasted, even by the confession of the Roman historians, from whom alone we have any accounts of its events. Rome was compelled, for her own safety, to grant the rights of citizens to all the states which had remained firm in their allegiance ; and the contest was only terminated, notwithstanding the better fortune which is related to have attended their arms the next year, by extending the privileges to all who would receive them. The Lucanians and Samnites were excepted by the Romans, according to the Roman account ; the probability is that they refused the proffered terms ; however, in 670, they too were comprehended.

The whole of Italy, that is, all to the south of the Rubicon on the one side, and the Arno on the other, was now comprehended in the Roman state. The inhabitants were enrolled in tribes and centuries ; they voted ; they could hold office ; they were admitted to the games ; and they could intermarry with Romans. Cisalpine Gaul had for a long time ceased to be regarded as part of the Italian territory ; it was reduced in all respects to the condition of a province, or rather of two, the cispadane and transpadane, or Gaul on either side of the Po. The rights of the city were not extended to these provinces for many years after the rest

of Italy had been naturalised ; Julius Cæsar, in 705 A.U.C., completing their admission.

The provinces were treated in a far more harsh manner than the Italian states, even in the latter period of their alienage. They never were at any time deemed allies (*socii*). Their own government was abolished, and Roman magistrates administered all their affairs. The senate exercised absolute power over them and made laws for their government ; and although some of their old laws might be allowed to remain in force, yet the Pro-Prætors published their edict or code of laws on entry upon office, as the Prætors did at Rome.

In proportion as liberty declined at Rome, and the rights of the people were disregarded, the scruples became naturally diminished about extending the privileges of the city ; and the emperors even might desire to have supporters in whom they could confide when tyrannizing over the citizens of the capital. Julius Cæsar introduced the practice of granting civic rights to the provinces ; he began with Cadiz and other towns in Spain, making them, however, pay largely for the privileges bestowed. Mark Antony extended a portion of the same rights to Sicily, but withheld part, and exacted large sums for what was given. It was the advice of Mæcenas that Augustus should admit the whole empire, with a view to secure efficient support from the attachment of the provincial subjects. That wily sovereign, however, held a different opinion, and did not concede the right indiscriminately. His successors pursued various plans, generally making the gift a source of gain to themselves. At length Caracalla extended the right to the whole subjects of the empire.

It appears manifest that the rights thus gradually acquired by the inhabitants of part of Italy and part of the provinces, could not materially interfere with the power exercised by the citizens of the metropolis, at least during the existence of the Republic ; for none of those rights could be exercised without removing to Rome. Augustus, indeed, introduced a great change in the manner of voting, by allowing the non-resident voters to enter their suffrages with a magistrate, who transmitted them in writing to Rome ; a change which would have produced the greatest alteration in the administration of affairs had it been earlier adopted, but which there was no chance of any one venturing even to propose as long as the people retained their influence, that is, as long

as the franchise was of any value. Nor can we doubt that this remarkable measure of Augustus was resorted to in aid of his endeavours to check the corruption that prevailed at the Roman elections (Part II. Chap. XIII.). After his time there was nothing like even the name of election at Rome, and the scene of bribery and corruption was now transferred or confined to the provincial towns and colonies, where offices were still filled by popular choice.

That a great concourse of strangers, both Italian and foreign, constantly thronged the capital cannot be doubted; and the extension of the civic rights tended somewhat to increase this influx. In earlier times, and when only parts of Latium and some of the towns had the franchise, we find alarm excited at Rome by the number of Latins flocking thither. Twelve thousand are said to have been summarily ordered to leave the city in the year 550; and as a further check, those Latins only were permitted to reside at Rome who had left children in their own country. But the near neighbourhood of their home much more than the exercise of civic rights was the cause of this influx; and the silence of historians as to any similar inconvenience having ever been experienced from the concourse of more distant people, as well as the fact of no such precautions having been taken for removing their inhabitants, sufficiently proves that few used to visit the capital in order to exercise there the suffrage which they had acquired.

CHAPTER VI.

EXTENSION OF DEMOCRACY—REPRESENTATIVE PRINCIPLE.

No Representation in ancient times—Representative and Federal Principles distinguished—Examples, ancient and modern—Definition of Representation—Definition illustrated and proved—Representatives must be free—Historical Illustrations—England, old Writs; France; Sicily; Scotland.

In all these attempts to extend the range of Democratic government, and enable it to embrace a larger territory, it must be carefully kept in view that there was nothing whatever of Representation. There was choice, there was election; the people selected a functionary, and appointed him as their delegate, that is, as the delegate of the whole community, to act for it in the convention of delegates from other similar communities. He was to declare their particular will, and not to consult for the good of the whole. Each member of the federal union was heard by its delegate, as if it had been heard by itself. He was like an ambassador sent to treat with the ambassadors sent by other states. He was not a representative sent by one portion of a community to consult with the representatives of other portions of the same community, and to devise the measures best adapted for securing the interests of the whole. On the contrary, he was an agent commissioned to watch over the separate, independent, and possibly conflicting interests of his principal. In some sort the interest of the whole union was to be regarded, because it was the interest of the part which sent him to preserve the existence of the whole. Mutual protection, the origin of the association, implied mutual aid, and, to a certain degree, mutual sacrifices for the safety of the whole. But in no other sense had the delegate a truly representative character. This is the first and leading distinction between the ancient and the modern principle.

The other distinction is hardly less important. The general

council, or Diet, had no concern whatever with the internal administration of the states which were represented in it. The only subjects of its deliberation were those matters which concerned the mutual intercourse of the different states, and their common interests with respect to foreigners, to other states, or other confederacies. Each state was sovereign and independent within itself, and administered exclusively its own affairs. Nothing can more than this show how entirely the delegates must be considered as mere agents or ambassadors, how different their functions were from those of representatives, how completely the government of the whole federacy differed from a representative government. The utmost that can be said is, that the union was representative *quoad hoc*; representative as far as the international relations of the different members, and the common relations of the whole with foreign powers, were concerned. In the same sense, ministers sent to a congress of the European powers may be said to represent the different states in settling international questions and questions regarding other powers not admitted to the congress.

The Representative principle, the grand invention of modern times, is entirely different in both these essential particulars. It consists in each portion of the same community choosing a person to whom the share of that portion in the general government of the whole shall be entrusted, and not only the administration of the affairs of the whole as related to other communities, or the administration of the affairs of each portion in its relation to other portions of the state, but the administration of all the concerns whatever of that separate portion.

Thus, the delegate from Thebes, or the Bœotarch as he was called, being probably a lord, the chief magistrate in his quality of the deputy to the Diet, only represented the interests of Thebes in that Diet, and he only consulted there respecting the relations between Thebes and the other Bœotian cities, or respecting the relations of the whole Bœotian union with foreign states, as Athens and Sparta. He had no power to treat of any matter concerning the internal government, the domestic affairs of Thebes, any more than of Athens or Sparta. But the delegates from London to the British Parliament, or from Paris to the French Chamber of Deputies, are authorised to consult not only respecting the relations of Paris with Marseilles, and of London with Liverpool, or

of all England with America, or all France with Spain, but they have exactly the same authority to consult and enact respecting the police, the magistracy, the civil rights, the criminal laws, of London and of Paris.

The difference here stated between the Federal Delegate and the Representative, does not depend upon the way in which we may regard a representative's duty with respect to the instructions of his constituents, or with respect to the interests which he is bound to consult. Whether he is to obey the instructions of those who choose him, or to follow the course indicated by his own judgment; whether he is to regard himself as representing those who elect him, or the whole state; he is still vested with an authority, and exercises functions different, and different in kind, from those of the delegate to a federal congress. The matters respecting which he is to consult, and on which he is to decide, are specifically different from those which fall within the delegate's competence. They include the latter, but their most important branch is foreign to the commission of the delegate. That commission, too, is in its nature somewhat occasional. When a treaty is in agitation, when hostilities are in contemplation or in progress, when any dispute has arisen between members of the Federacy, then the functions of the congress come into active exercise. But the duties of the representative, comprising the administration of internal affairs, the affairs of every portion of the community, of each state in the league, are constant and not occasional. If, indeed, the congress of a federal union had the power of legislating for each of its members added to its proper office of deciding among them, and of representing them all with foreign states—then, indeed, there would be a close resemblance between the Congress and a Representative body; but the union would cease to resemble that of the Federacies either in ancient or modern times.

We may observe another difference not immaterial between the two systems. The modern representative is chosen and appointed merely as such; his only capacity is representative. The ancient delegate was probably in all cases a magistrate, generally the chief of the state who sent him. He was elected to rule that state at home, and he acted for it in the congress, as the sovereigns who attend our modern diplomatic congresses act for their own states, or send their ambassadors to represent them and act

for them. He represented the local sovereignty in the general council. The representative represents no sovereignty or power residing among or ruling over his constituents; he represents them as speaking for their interests, in one view of his duties—as consulting for the interests of the whole community, in another view of these duties.

The essence of Representation, then, is that the power of the people should be parted with, and given over, for a limited period, to the deputy chosen by the people, and that he should perform that part in the government which, but for this transfer, would have been performed by the people themselves. All these several things must concur to constitute representation.

1. The power must be parted with, and given over.—It is not a Representation if the constituents so far retain a control as to act for themselves. They may communicate with their delegate; they may inform him of their wishes, their opinions, their circumstances; they may pronounce their judgment upon his public conduct; they may even call upon him to follow their instructions, and warn him that if he disobeys they will no longer trust him, or re-elect him, to represent them. But he is to act—not they; he is to act for them—not they for themselves. If they interfere directly, and take the power out of his hands, not only is the main object of Representation defeated, but a conflict and a confusion is introduced that makes the representation rather prejudicial than advantageous.

2. The people's power must be given over for a limited time.—This is essential to the system. If the delegation be for ever, allowing the deputy to name, or to join with others in naming his successor, or even if he be continued for his life, and the constituent name his successor, the virtue of the system is gone, and the body of representatives becomes an oligarchy, elective indeed, but still an oligarchy and not a representative body.

3. The power must be given over for a limited period to deputies chosen by the people.—This is of all others the most essential requisite. If any authority but the people appoint the deputies, there is an end of representation; the people's power is usurped and taken from them, and instead of having any concern in making the laws that are to govern them or in administering the affairs of the state, some other power legislates and rules

over them, and in spite of them, although it may add insult to injury by the mockery of pretending to govern in their name.

4. Finally, the representatives are to perform that part in the government which would otherwise have been performed by the people.—They are to administer the local as well as the general concerns ; they are to govern each part as well as the whole. But they may have a greater or a less share in the government without its ceasing to be of a representative nature. That would be in the strict sense a representative constitution in which the people's deputies were circumscribed in their authority ; in which, for example, a prince or a patrician body had the sole right of propounding measures, or in which all control of the public purse was left to the patrician body, or in which all patronage was vested in the sovereign. The extent of the powers vested in the deputies of the people is immaterial to the question whether these be a representative body or not, provided that the deputies come in the people's place. If the democracy was pure, the substitution of representatives makes those representatives absolute while their authority is unrevoked. If the government was mixed, either by the addition of a sovereign or of an aristocracy, or both, the substitution of representatives gives them a portion of the government, which continues mixed still.

It may perhaps be supposed that this representation is of two several kinds ; as the representative, it may be said, either has the discretion of deciding and acting according to his own judgment, or he is bound to decide and to act according to the commands of his constituents ; and some may suggest that the one of these is a proper or perfect, the other an improper or imperfect kind of representation. But I conceive that this is altogether an incorrect view of the subject, and rests upon a misapprehension of the representative principle. If the deputies are mere delegates sent to do as their constituents direct, their appointment can hardly be said to vary the constitution from what it was before ; the power is still in the people's hands, though executed by an agent. Besides nothing can be more inconsistent, or indeed more absurd, than for men to meet in order to vote as they have been ordered ; nor can anything be more preposterous than for those men to be selected with care in order to perform this mechanical task. It is not of the least importance who are chosen for the

purpose. Nay, it is not of the least importance by whom they are chosen. Men appointed by any other power in the state would be just as capable of giving the prescribed votes as the representatives the most carefully selected by the people themselves. The importance is transferred from the proceedings of the deputies to the proceedings of the constituent bodies. The whole government of the state depends upon what passes in the local assemblies, not upon what is transacted in the council of the deputies. When those local assemblies have resolved severally on any matter, the decision of their representatives is a mere ceremony, and a useless ceremony. There is no occasion for them to meet at all. A clerk receiving the instructions and publishing the result would be quite as good as the operation of taking the votes. Nay, a mere publication of the results of all the local meetings held to instruct the deputies, would enable any person to ascertain what the determination had been.

Nor is there any medium between this state of things which makes the whole mechanical and the representative character a mockery, and the state of things which I have described as constituting the definition of Representative Government. Some have with little reflection maintained that a general discretion may be given to the deputy, but that on occasions of extraordinary importance he must obey the instructions of his constituents. Who is to determine what is and what is not an important occasion? Do we not know that the important measure always means the present measure, and that the people ever give that name to the matter in hand, ever confine their attention exclusively to the affair of the day? Besides, suppose we had any test of relative importance, the very occasions of highest moment are precisely those upon which it is the most inexpedient that the direct interference of the people should be allowed. The virtues of the representative system, as we shall presently see, most chiefly consist in the discretion being transferred upon such occasions.

The whole history of the representative principle proves the soundness of the doctrine for which I am contending; it shows that the vesting an entire discretion in the deputy is an essential part of the definition. Both in England and on the continent the original form of the states was a council of the sovereign, composed of his feudal vassals, and convoked to aid him in his government

with their local knowledge, or to render their assistance in his wars more hearty, or to receive his edicts and laws, published by his promulgating them at their assembly. The deputies of towns in those kingdoms, especially in England and France, were, after some ages, summoned in order to facilitate the raising of taxes from the trading classes. Yet the writs of summons which we have, both to the town deputies, when they were called, and to the country deputies, when the lesser vassals sent representatives instead of attending in person, always indicated that much more was to be done than the mere delivering of the votes as by the envoys or agents of the electors. The famous writ of Simon de Montford (1264) in Henry the Third's reign, summoned from each county two knights "*de legalioribus et discretioribus*" of the county, and from each city and burgh two citizens or burgesses "*de legalioribus et discretioribus et probioribus*," of the citizens and burgesses; and those assembled were to treat and labour and consult with the king on the most important concerns of the realm, some of which are set forth in the preamble.* So the writ of 23 Ed. I. (12) requires to be chosen two burgesses "*de discretioribus et ad laborandum potentioribus*."† In some writs the term used is "*idonei*;" in some it is "*de sapientioribus et aptioribus civibus*," as the writ 11 Ed. I. to cities and burghs.‡ The writ summoning the Sicilian parliament, in the same age (1240), required Syndics (Mayors) to be sent "*de melioribus et magis sufficientibus*" (Part I. Chap. XVII.). We shall presently see (Part III. Chap. VII.) that the older Frankish summons required the Counts to be attended by the "*meliores homines comitatus*."

In other countries the origin of representation is lost in obscurity, and the law establishing it being no longer known, we are obliged to collect its provisions from the tenor of the writs issued under them. But in Scotland the statute remains which first called to parliament the representatives of counties in James the First's reign, 1427. The freeholders are to choose "two or more wise men, with power to hear, treat, and formally determine, and to choose a speaker" (Act 1427, c. 102). All these qualifications required of the deputies, and the functions they were called to perform, are wholly inconsistent with the supposition that representa-

* Parl. Writs, i. 16.

† Rym. Fœd. 1802. Parl. Writs, i. 29.

‡ Parl. Writs, i.; and see Brady, 155.

tives were originally commissioned merely to deliver a message, or act according to the will of their constituents, or give the vote of those constituents in the assembly. Discretion, ability to transact business, probity, respectability, station, and fitness, were manifestly quite immaterial in a person deputed merely to put in the votes of those who sent him ; and the terms consulting, hearing, treating, determining, convey anything rather than an idea of this simple and mechanical function. We may therefore most confidently conclude that the exercise of discretion is essential to the representative character, and that the assembly of deputies is in its nature strictly a deliberative body.

Hence I apprehend it to be clear that the definition above given of Representation may be relied on as strictly correct. It is the people parting with and giving over their power—for a limited period—to deputies chosen by themselves—those deputies fully and freely exercising that power instead of the people.

CHAPTER VII.

ORIGIN AND HISTORY OF REPRESENTATION.

Near approaches of the Ancients to Representation—Feudal Councils—Franks; Saxons; Spaniards; English Heptarchy—Gemotes—Origin of English County Representation—Errors of some authors—Admission of Town Representatives—Evidence from Statutes—Evidence from Writs—Towns attended to be taxed—Town Representation derived from County—Royal demesne Towns first represented—Scotch Representation—Early Scotch Statutes—Difference of Scotch and English Parliaments—Irish Parliament—French Councils and Estates—English Controversy.

IT is certain that although the commonwealths of ancient times had not in any part of their political system the representative principle, yet they made so near an approach to it as leaves us in some wonder how they never should have made this important step in the art of government. The delegation of persons to a federal council, and the assembly of the Amphictyons (Part I. Chap. xv.), might easily have suggested the idea of choosing men to represent the whole people in administering the internal affairs of any given state. Indeed the election of magistrates, though apparently less like representation, is in reality more akin to it; for the powers of executive government are given over by the people to the functionaries chosen. This was necessary, because of the impossibility of a whole people exercising these functions. If, then, any of the old republics had been so extensive as to make assemblies of the people impossible, it is likely that the expedient would have been adopted of delegating the legislative functions to a smaller body. At Athens there were smaller bodies, chosen by lot, to exercise certain branches of government, not only judicial branches, but political, the senate being a select body thus chosen. Had the selection been by choice, and not by lot, this senate would have been a representative body. The extreme jealousy of the people, and their alarm lest any oligarchy should be introduced, prevented the elective principle being applied to the appointment of any powerful body. The blind hazard of the lot was deemed the only security against cabal, and intrigue, and individual ambition.

When the feudal system was introduced into Europe, and the provinces of the Roman Empire became monarchies of a peculiar structure, unknown in ancient times, the barbarians who had overrun the provinces found no political institutions beyond those of an absolute despotism ; but they brought with them a practice of restricting the chief's authority, as well as aiding him in his plans, both of peace and of war, by the council of his principal followers. Out of this practice arose the custom of assembling the great men, whether lay or clerical, on important occasions, and afterwards at stated periods, generally on the continent twice a year, at spring and fall.

The Saxon nations were more attached to liberty, and gave their princes less power than the Franks, who founded the French monarchy, and the Normans, who afterwards obtained possession of a portion of France. The extent of the Saxon conquests gave their military chiefs greater authority when their dominions were enlarged than they had ever enjoyed when their possessions were more limited. In this island their institutions partook of the more ancient and free system ; while in the south the royal authority was more arbitrary and uncontrolled, except in the Spanish Peninsula, where it was most restricted. But in all the feudal kingdoms, both before and after the complete establishment of the system, there were meetings of great men who assisted the sovereign, and who, in some sort, also set bounds to his power.

In England, under the Heptarchy, these assemblies are by some supposed to have been held as of the people's right, to whom the sharing of the supreme power between the king and the principal men was thought to afford a protection for their liberties. In the continental kingdoms, with the exception of Spain, the assemblies were rather convoked by the sovereign for his own benefit ; and he thus both received local information from those who attended, living in various parts of the kingdom, and obtained also their concurrence in any warlike operations for which he might be preparing (Part I. Chap. XI.). But the constitution of these assemblies, both before the feudal system was completely established, and for some time after, was nearly the same in this island, and in all parts of the continent. There was nothing resembling an elective representation of any class in the country.

It seems well ascertained that those assemblies, called by the

Saxons *Mickle-gemotes*, or *Witenagemotes* (Great Assemblies, or Assemblies of Wise, that is Considerable, Men), were attended only by the allodial proprietors—that is, by the persons who owned land without any condition of service for it, either to the king or to subject. It is probable that not even all proprietors of this class attended, but only the more considerable ones; and we are left uncertain if they had a right to attend, or if they only came on the summons of the prince. When the Saxon Hephtharchy was united under one monarchy by Egbert in the ninth century, we can have no doubt that a general gemote was held for the whole kingdom, in place of the Saxon gemote formerly held. Those who attended the gemotes were called *Witan*, literally wise or respectable men. The vassals were not deemed sufficiently independent to attend; and the peasants were in a state of villeinage. The only distinction between man and man was the possession of land, and the holding it free, or by rendering service to another. The landowners and nobles (*Magnates* or *Proceres*) were, therefore, the same body.

When the Conqueror obtained possession of England, he continued the Saxon practice of summoning councils, now called, from the Norman, Parliaments, to which, moreover, he was accustomed in Normandy; and during the earliest of the Norman reigns they were composed in the same manner. But soon after the Conquest a practice was introduced which appears to have afterwards been attended with important consequences. The king commissioned knights in each county to inquire respecting the local customs, the abuses of the law, and the other grievances of the subject. It is probable that the *Missi Dominici* of Charlemagne gave the idea of these commissioners (Part I. Chap. xv.). These knights were sometimes named by the king, and sometimes chosen in the county court—that is, by all the freeholders assembled under the viscount or sheriff. Occasionally the same device was resorted to in order to collect subsidies. Justices in Eyre (*in itinere*) were commissioned to obtain these, and sometimes knights were added for each county. From this practice we may easily conceive that another became likely, the summoning so many knights to the general council, called the Colloquium or Parliament since the Norman Conquest, and which, as we have seen, succeeded to the Witenagemote. Accordingly, on one

occasion we find the king summoning (1213) four knights for each county to meet him at Oxford, and discuss or treat with him (*ad agendum nobiscum*) on the state of the kingdom. John had at this time quarrelled with his greater barons, and he probably thought he could obtain favour and support from the freeholders at large. In Magna Charta a provision was introduced requiring the king to summon to parliament each prelate and greater baron individually by his own letter missive, and to summon the lesser barons through the sheriff and viscount.

The numbers of the Saxon gemote most probably diminished considerably before the Conquest; for although it be true, as Mr. Millar contends (*English Government*, I., 219) that landed property became in the course of time much divided, it is equally certain that allodial property was daily diminished in amount by proprietors feudalizing it for the sake of obtaining protection under powerful lords, in that distracted state of society (Part I. Chap. VIII., IX.). In the Conqueror's parliament the prelates and the barons who held of the king *in capite* were in all probability the only members, and continued such for the next four reigns. Nor was the plan for that long period of time introduced of the lesser barons sending some of their members to represent the whole. They did not, indeed, attend in person willingly; but they were frequently required by the king to appear; and their aid in counteracting the influence of the greater barons was a powerful motive for requiring them to perform this branch of the feudal duty, of the service due from them to the sovereign under whom their lands were holden.

It is, however, certain that each prelate and baron could, if absent himself from just cause, appear by his procurator or proxy. A Mercian charter which is extant, has by its mention of proxies misled many political reasoners, and made them most erroneously contend that, as early as 811, there were representatives of the boroughs, because the charter purports to have been granted in the assembly of the prelates, barons, magnates, and *procurators*. It is judiciously remarked by Mr. Millar that the placing this in juxtaposition to magnates shows their proxies to be signified by the term. The mention made of an assent or applause by the multitude to whom the laws or resolutions taken in the parliament or gemote were proclaimed, clearly proves nothing more than that they were present as spectators. Indeed the

silence of all the older historians and chroniclers, as well as of all the writs in those days, seems decisive of the question ; and when we recollect that the local inferior courts of the shire, the hundred, and the tithing, were all composed of the landowners, as we know from the laws of Henry I.,* there can be no doubt that the general and superior court of parliament was constituted in the same manner.

The body of tenants *in capite* who owed this service of attending the king's council or parliament was not very numerous. By Doomsday-book it appears that in the time of the Conqueror they did not exceed 605, including about one hundred and forty ecclesiastics. Of the lay barons nine-tenths must have been the lesser or common freeholders, who were summoned through the sheriff and without special writs, leaving not above forty or fifty of the great vassals. At what precise time or by what steps the attendance of the more numerous body, the lesser barons or common freeholders, was commuted for their choice of two of their number in each county, as representing the whole, we are unable to ascertain. That it must have been before the year 1264, seems clear ; for the writ of Simon de Montford in that year directs the sheriff of each county to return two knights ; and it can hardly be supposed that he would have loaded his usurpation with the additional odium of only summoning two of the freeholders in each county, had this been an innovation. The argument used by some, that we have no trace of any similar writs between that time and the 18th of Edward I., really proves nothing ; for the general writs of summons are equally wanting, and that parliaments were repeatedly holden during that interval, and some of the most important statutes ever made were passed, we know for certain. The writs in 18 Edward I. are extant, and they command the return of knights for each shire, by election (*eligi facias*), to come with full power to consult and treat with the greater barons. Representation of the freeholders or counties was, therefore, at least as early as 1290, fully established, but in all likelihood half a century before ; and the step which led to it was probably the appointment of knights as royal commissioners, sometimes chosen in the county courts, in the way already stated.

* LL. Hen. I., ch. vii., and Laws of England, vol. ii. Published by the Record Commissioners.

The admission of the townsfolk to any share in the proceedings of parliament, was a yet more important step. The representative principle had been introduced, but it was only applied to relieve the freeholders from the burthen of an attendance which they had from time immemorial given as a necessary part, first of the gemote, then of the parliament. The citizens had never attended in any way. But whether De Montford thought it would serve his purpose to call them in, by letting them choose two of their number like the freeholders, or whether it had some years before been usual to admit them for the purpose of obtaining the more ready assent of the towns to the payment of subsidies, we are not precisely informed; and the question has produced very warm controversy. To me it appears that the evidence of probability preponderates in favour of the position that De Montford first summoned the boroughs, and that for twenty-five years afterwards his precedent never was followed. The principal ground of this opinion is the evidence afforded by the statutes themselves.

Let us ask now how the parliament is described after Simon de Montford's writ in 1264. The answer certainly is, at first not otherwise than before the meeting so by him convened. The Statute of Merton (20th Henry III.) purports to be made by the king in the assembly of the prelates, earls, and barons, and the provisions made three years after (43rd Henry III.) are said to be made by the king and his magnates. The Dictum de Kenilworth, 51 (2nd Henry III.), soon after De Montford's parliament, purports to be made by the king and his barons and counsellors; the Statute of Marlebridge next year by the king and the more discreet men, both greater and lesser—that is clearly the greater and lesser barons. The well-known Statute of Westminster 1st (3rd Edward I.) purports to be made by the king, the prelates, earls, barons, and commonalty (commune), but it is to be observed that the proclamation for its observance only states it to have been made by the prelates and magnates (Stat. of Record Com. i., 39.) The Statute De Bigamis (4th Edward I.) only mentions the king, the prelates, and his council. The Statute Rageman uses the same form, omitting the prelates. The Statute of Gloucester (6th Edward I.) mentions the discreet men, greater and lesser; the 7th Edward I., De Religiosis, is by the king and his council; and so is the Statute of Acton Burnel, 11th Edward I. The famous Statute de Donis, or Westminster 2nd (13th Edward I.),

is by the king, prelates, barons, and council; the Statutes of Winton and *Circumspecte agatis* only mention the king; and that of *Quia Emptores*, or Westminster 3rd (18th Edward I.), mentions only the magnates with the king. The Statute of *Quo Warranto* (18th Edward I.) merely states that it was made at a parliament (20th Edward I.). But whether the burgesses were present in these two years we are not informed. In the 25th Edward I., however, 1297, their right to be present is fully recognised; for they are named with the knights and magnates as constituent parts of parliament (Statute de Tallagio). As the Statute of Fines (27th Edward I.) mentions only the council; and that of false money, the same year, the prelates, earls, and barons; and that of 33rd Edward I., the king and all his council; it is possible that a complete parliament was not at that time called, unless when a tax was to be imposed.

But the Statute of Carlisle (35th Edward I.) adopts another language; it purports to be made by the king, earls, barons, and regni sui communitates, the commons or communities of his realm. This expression is the one afterwards most generally repeated. The word is sometimes *communes*, sometimes *communauté*, sometimes *toute la communauté*; and by comparing together the Statutes 7th, 12th, and 14th Edward II., 1st, 2nd, 4th, 5th, 9th, 10th, and 25th Edward III., it is manifest, *first*, that there is no difference whatever in the thing signified by these two forms of speech, and, *secondly*, that both comprehended knights and burgesses. This last proposition is manifest from 9th Edward III., which mentions knights, citizens, and burgesses as "coming for the commonalty."

The probability that these statutes so often omitted all mention of knights, citizens, and burgesses, because the matter related not to taxation, is greatly increased by the circumstance that we have the writs of summons to some of these parliaments, and the writs of expenses for their members; from which it appears that the knights, citizens, and burgesses were summoned, and that many attended. It also appears that, as early as 3rd Edward I., customs were granted by "*tous les graunds del realme et par la priere des communes de marchands.*" In 11th Edward I., all persons are summoned who can bear arms and have twenty librates of land; and also knights, citizens, and burgesses are summoned as to a Parliament. This was holden at Salop on account of the

expedition against Wales, and a subsidy of one-thirtieth was granted, as well as a force raised. In 18th Edward I., the writ is to summon two or three knights to represent the community, which, by the writ of next year, is shown to be for the county only; yet they are called the community of all England. Next year, however, a French invasion being apprehended, citizens and burgesses, as well as knights, are summoned, there being great occasion for supplies. In 24th Edward I. we have the actual return of citizens and burgesses; and in 35th Edward I., though the statute made at the parliament of Carlisle only mentions the commons of the realm, we find the writ of expenses for citizens and burgesses in the collection of records (1 Par. Writs, p. 192). The writ, 23rd Edward I., shows that community is a word of flexible import, for the knights are to represent the "community of the counties," the citizens and burgesses the "community of the towns." Likewise there is in 18th Edward I. a grant by the prelates and magnates for themselves and the community of the whole kingdom, of 40s. on each knight's fee to marry the king's daughter (the feudal law only allowing two marks), consequently this was a grant made without the consent of the citizens and burgesses. It appears, then, that at first these attended only to be taxed.

Thus there seems every reason to consider that from the year 1264, when Simon de Montford summoned them, the towns were regularly summoned as often as a parliament was held, but that they only attended when there was a question of taxing them, and that it was only towards the end of Edward I.'s reign that they attended as a regular and essential part of every parliament.

That the cause of the important change which admitted them was the rise of the towns in wealth during the preceding century, there can be no doubt; as little can it be denied that the summoning their representatives was designed to make them more easily taxed. A singular illustration of this is preserved in some of the old writs still extant, and which shows that other means were used than the assembling their representatives together. In the 10th Edward I. we find the king sending one John de Kirkeby round to all the cities and boroughs, and desiring each of them to give entire credit to whatever he shall state in the matter which he is directed to handle with them severally. What that matter is we are not left to conjecture; for another writ returns the king's

thanks for the subsidies which the towns promised him through John de Kirkeby.* It may be further observed, that this mission of Kirkeby seems strongly to countenance the supposition that the plan of summoning the burghs, adopted by De Montford, had either fallen for some years into disuse, or was not resorted to on all occasions. When the grant of one-thirtieth was made for the Welsh war in 11th Edward I. by the parliament of Salop, the sums paid to Kirkeby were deducted (1 Parl. Writs, 10), so that it appears his mission so far failed as to make a parliament necessary.

That the plan recently introduced of allowing the freeholders to attend by deputy, greatly facilitated this admission of the towns, is manifest. Possibly it suggested their admission. The crown could not require the attendance of so numerous a body ; if it was regarded as a duty, they would have had an easy excuse for refusing ; if it was regarded as a privilege, the crown could not be called upon to admit so inconvenient a concourse.

It has been suggested, and with great appearance of reason, that the towns first called to parliament were those within the royal demesne, and which were tenants *in capite* of the crown. When a charter of incorporation was granted by the king, the corporate body became tenant *in capite*, and owed such suit and service as was prescribed by the form of the gift. The inhabitants, the individual corporators, did not hold of the crown, but of the corporation, by a peculiar tenure called *burgage holding*. If they had been tenants *in capite* they would have been entitled to the privileges and subject to the duties of the lesser barons or freeholders, and consequently would at all times have been summoned with the county landowners ; at first they would have been so called in person, and would have joined with them more recently in electing the knights of the shire.

We can have no doubt that the History of Representation in Scotland was similar to that which we have just been tracing. But one step of its progress is much better ascertained from having been later made—the representation of the counties ; and in another particular there is a material difference in the history of the two parliaments ; for the towns were represented, while the lesser barons, or freeholders, attended in person.

It is possible that as early as the end of the thirteenth century

* Parl. Writs, i. 384, 387.

the towns sent delegates, or representatives, to parliament; for in 1294 we find Fordun mentions that John Baliol called together in a parliament "*majores tam cleri quam populi*." As, however, no mention is made of the barons, possibly the "*majores populi*"* may mean the nobles. It is nevertheless to be remarked that in the treaty of marriage which this parliament made with France, the negotiation assumed to bind not only the prelates, earls, and barons, but also the towns (*communitates villarum regni*).† Edward I., too, summoned the states to meet at Perth, in 1305, and they gave full powers to ten persons, of whom two were barons, and two were to appear from the "*commune*," which most probably meant the boroughs; and this would show that they had been represented in the parliament which chose the delegates. But that Robert Bruce called the Burghs cannot be doubted, because we find in the parliament held 1326, there were assembled "*totus clerus, comites, barones, et universi nobiles, una cum populo*," which last expression occurring after "*universi nobiles*"‡ can only mean the burghs. The right of the burghs to attend all meetings of the estates was therefore clearly established, at least as late as the beginning of the fourteenth century.

Accordingly the laws of Robert I. purport to be made by the "prelates, freeholders, and hail community," which must mean the burgesses, because the freeholders had at that time no representatives (LL. of Robert I. Title, Chap. 34). In 1357, at the parliament held at Edinburgh on the king's liberation, the whole commons, as well as the prelates and nobles, are recited as composing it, and there are given the names of the thirty-seven burgesses who attended, choosing eleven of their number to represent them in the negotiation.§ Again, the statutes of Robert II., 1372, purport to be made by the consent of the prelates, earls, barons, and burgesses. The earliest laws, those of Malcolm II., who was king in 1004, purport to be made by the king and the barons. Those of William the Lion (1165) are stated to have been made by the king's consent, the prelates, barons, knights, and freeholders; those of Alexander II. (1214) by the king and nobility, and sometimes the judges are also mentioned. But till the reign of James I., and the year 1427, the lesser barons, as

* Scotichron., lib. xi. chap. xv.

† *Ib.*, lib. xi. cap. xvii.

‡ Fordun, lib. xiii. cap. xii.

§ Rym. Fœd., vi. 40.

well as the greater, attended in person. In that year an act was made allowing them to absent themselves, provided they sent representatives (1427, c. 102). This condition they never fulfilled, but ceased to attend in person. Accordingly the parliament consisted of the prelates, greater barons, and burgesses, without any county members, until the year 1587, when James VI., having twenty years before made an ineffectual law, 1587, for the purpose of executing the statute of James I., made a more stringent one, which had the desired effect; and at the same time affixed a qualification of 40*s.* a year of lands holden of the crown, and of residence within the county. Both of these circumstances were required to confer the elective franchise for choosing a commissioner or county member. The sum of 40*s.* amounts to 3*l.* of our money. Twenty years before an act with the same object had been passed, 1587, c. 33, but it affixed no qualification to the elective franchise, and imposed no fines.

The Scotch parliament, in some very material respects, differed from the English. The different estates always sat and voted together as one body. The business to be brought before it must first be assented to by a committee of the three estates, called *Lords of the Articles*, appointed till Charles I.'s time by the estates, but generally composed of the king's ministers. The king's assent to laws was not deemed essential to give them force. The parliament, or estates, used to make orders on the king himself; to direct the arming of troops and their levy; to appoint governors of garrisons; to make peace and war; to prorogue and assemble of itself. Nothing could be more complete than the misrule and the anarchy which grew out of these extensive powers; and the prerogative of the crown was reduced to a shadow, unless when it could raise a military force, or obtain the aid of one faction of the barons against another. The accession of James VI. to the throne of England produced the consequences of the imperfect federal union; but in no other instance was its operation ever so entirely beneficial to the less powerful nation; for if the prerogative of the crown was enlarged, and that of the parliament restricted, the country began for the first time to enjoy the blessings of a regular and tranquil government.

The History of the Irish Parliament is meagre and obscure. No statutes of it remain before the 3rd of Edward II.; but

many inquirers have considered it certain that as early as the reign of Henry II., when the country was first settled, or so far conquered as to be supposed settled, there was a council of the ruling class, the Irish within the pale, who were the portion of the people subdued by and immediately connected with the English. The Irish without the pale, living in a very rude state, and in continual hostility with the English, were treated by them in all respects as foreigners and as enemies. As the defence against them, and also the incursions made upon them, required constant precautions on the part of the English and their subjects within the pale, the holding of councils became in all probability a matter of necessary precaution. At first the leading men formed this council of the king's governor, deputy, or lieutenant. Afterwards the districts, or counties, into which the country was divided (only twelve as late as Henry VIII.'s time) sent representatives, as did the towns, which were thirty-four in number. A dispute appears to have existed between the English government and the Irish people as early as Edward III.'s reign, about the right of the latter to have their own parliament; for they then asserted it, and refused to send representatives to England. In the reign of Henry VII. an act was passed (called Poyning's law, from the name of the lord-lieutenant) requiring that the king's previous consent should be obtained, at the calling of each Irish parliament, to all the bills which should be propounded; and in Queen Mary's reign this restraint was extended by a prohibition to entertain any matter whatever during the course of the parliament, unless it had been approved by the English Privy Council. These laws, as is well known, were only finally repealed in 1782. But even during their existence, the power of taxing in all its branches was exercised by the Irish parliament exclusively; no English act was ever allowed to impose any new burthen upon the people.

It is a singular circumstance in the history of representation, that the country in which it was first known is not the one in which it has been carried to its greatest perfection. Our records do not enable us to trace the constitution of the English or Scottish parliaments so far back as we can follow the meeting of the French States-General. We have records of unquestionable authority as far back as the reign of Charlemagne, which show how his courts, councils, malla, or placita were composed. All

those who held under the crown were to come twice a year, in summer and autumn;* and an old author, contemporary with that prince, speaks of “*Cætera multitudo*” and “*Cæteri inferiores personæ*.”† But early in the ninth century we find proof of the presence of persons who, though not elected as representatives, were yet chosen by the people to fill the places which gave them admission to the Estates. A writ exists of the year 819‡ requiring each count to bring with him twelve echevins, scabini, or rachin-burghers, if there were so many in his domains, and if not, to fill up the number of twelve by the better kind of people (*de melioribus hominibus ejusdem comitatus*). Now, although this left the choice of the substitutes to the counts, the echevins were all elected by the people. For we have also an ordinance of 829, the Capitulary of Worms, which, from the purport of it, is plainly declaratory, or made to confirm the existing laws; and it requires the *missi* to remove all bad echevins (*malos scabinos*), and replace them with good ones, chosen “*totius populi consensu*.”§ There is also in the Alemanic law a prohibition to hear any causes, unless with the assistance of an assessor chosen by the people. It is plain, therefore, that so early as the beginning of the ninth century there was a popular infusion occasionally in the king’s mallow, or council.

But the French states at no time attained the regularity of the English Parliament, as we have seen in a former part of this work (Part I. Chaps. XI., XII., XIII.), and there never was anything resembling the representation of counties, the barons always attending in person, and never in any instance choosing representatives. Nor does such a representation appear at any time to have been known either in Germany or in Spain, or in any other country than Great Britain and Ireland, and perhaps the Gothic kingdoms of Scandinavia, where the peasants sent deputies (Part I. Chaps. XIX., XX.).

In tracing the origin of Representation we have unavoidably gone at length into that branch of the subject which is most interesting to the people of this country, and have been led to examine

* Ut ad mallow venire nemo tardet, primum circa æstatem, secundum circa autumnum (Capit. A.D. 769, cap. 12, ap. Baluz. i. 192).

† Hincmar, de Ord. Pol., c. 35.

‡ Capit. ii. cap. ii., ap. Baluz., i. 605.

§ Capit. 829; Cap., cap. ii.; apud Baluz., i. 665, 1216. The same law is often re-enacted in the capitularies.

the most important part of the early history of the English and Scottish Constitutions. There was no other way of avoiding endless repetition when we come to treat of the British form of government than by thus anticipating a portion of that important subject.

The questions upon which it has been necessary to touch have given rise to sharp controversies ; the natural zeal of the antiquary having often been exacerbated by the additional vehemence of the political partisan. Among the combatants on either side, the two principal champions of opposite doctrines respecting the earlier or later completion of our Parliamentary system are Mr. Petyt and Dr. Brady, the former having published his " Rights of the Commons Asserted " in 1680, and the latter his answer to it in 1683. There have been many other combatants in this warfare, of more or less name. But in treating the whole subject I have consulted only the true and safe sources of information,—the statutes themselves and the Parliamentary writs, both as published by the Record Commissioners ; the early Scotch statutes, unfortunately not yet given by the Commissioners ; and the Capitularies of the French monarchs.

CHAPTER VIII.

QUALITIES OF REPRESENTATION.

Evils of Federal Union—Advantages and Disadvantages of Small States—Feebleness of Federal Government; limits to its extent—Representative Government free from such evils—Benefit of entrusting power to small numbers—Of the People being able to meet in small bodies—Prudent measures and orderly deliberation—Increased responsibility of Rulers—Selection of Deputies—People confined to acts of which they are capable—Corruption of ruling class lessened—Diligent performance of duty—Greater Security to Liberty—Longer preservation of Popular Power—Country admitted to Government—Towns prevented from domineering over it—Real power of the People increased—Illustrations from French Republic and English Commonwealth—Rousseau's error.

THE great change in political affairs which we have been tracing to its origin could not be introduced without effecting a most important alteration in the whole structure of government, and enabling men to frame societies both upon a very different scale and upon very different foundations from those of the Commonwealths in ancient times. We are now to consider in detail what those alterations are which this invention of modern times has effected in public polity; and we shall best perform that task by examining the qualities and the tendencies of the Representative principle.

1. The first and most striking property of the Representative principle is that it enables a free or popular government to be established in an extensive and populous country. This we have already illustrated, by referring to the state of the ancient commonwealths, and the imperfect devices which became necessary for the purpose of enlarging the limits of the state without giving up Republican Government. Beside the other defects of the Federal Union, its manifest tendency to create mutual estrangement, and even hostility, between different parts of the same nation is an insuperable objection to it. Small communities are exceedingly apt to conceive against their neighbours feelings of

rivalry, jealousy, and mistrust. Each individual bearing so considerable a proportion to the whole society, that the worst personal prejudices and passions are nourished, and the most ignorant and violent of the people being the most numerous, the tone of the whole takes the turn which these bad passions tend to give it. If any illustration of this truth were wanted, we have only to remind the reader of what we found in the history of the Italian republics (Part II. Chaps. XIX. to XXVII.) The government always is influenced by such feelings, most of all in a democracy, but in a great degree also in an aristocracy, and even in a petty principality. For the rulers themselves in such a narrow community partake of the general sentiment, even if the public opinion should not sway them. Whoever would see further proofs of this position may be referred to the Ancient Commonwealths of Greece. As a Florentine hated a Siennese worse than a German or a Spaniard, or even an infidel in modern times, so of old did an Athenian hate a Spartan or a Theban worse than a Persian. Now the Federal Union, by keeping up a line of separation among its members, gives the freest scope to these pernicious prejudices, feelings which it is the highest duty of all governments to eradicate, because they lead directly to confusion and war.

It may further be doubted if the existence of a small community is of itself desirable for the improvement of society. Undoubtedly great public spirit may be expected to prevail in such a nation, and the feelings of patriotism to be excited, or rather to be habitual with the people, each individual of whom feels his own weight and importance instead of being merged and lost in the countless multitude of a larger state. But this advantage is more than counterbalanced by the attendant evils of petty, contracted ideas, which such a narrow community engenders, and especially by the restlessness which arises among all the people, when each takes as much interest in the state's concerns as if they were his own. There is thus produced both an over zeal, a turbulent demeanour, a fierce and grasping disposition, hardly consistent with the peace of the community; and also a proportionate inattention to men's private affairs, inconsistent with the dictates of prudence, as well as a disregard of the domestic ties, equally inconsistent with amiable character and with the charities of private life.

It would further appear that limits may be much more easily

set to the bounds within which a Federal Union can be established, than to those within which a representative system may conveniently exist. For the central government in a Federacy is of necessity feeble. It is more like a congress of ambassadors from many nations than the council of one nation. Each person is only animated with zeal for his own state, while none feel for the general welfare. But a representative government may extend over the largest dominions, and they who compose it may exercise an authority at once vigorous and considerate, thinking for the advantage of each portion of the community, as well as consulting for the welfare of the whole.

2. But it would be a great mistake to suppose that the only benefit of the representative principle is that one which strikes us first, the enabling a popular government to extend over a large territory. It is not even the greatest of the advantages derived from the principle. The next benefit which we are to consider is more important; it is the prevention of mob government by the substitution of a small body of men to whose hands the whole power of the people is confided. This at once puts an end to the tumultuous meetings, and to the rash proceedings of large popular assemblies. Mere clamour can no longer carry the day, and riot is banished from the public assembly. The bare diminishing of the numbers composing such assemblies would produce this effect. If, instead of 5000 or 6000, only 200 or 300 were to meet, although they were chosen, and chosen indiscriminately from the same body, so that the two meetings must be composed of the very same materials, yet the proceedings of the lesser number would be much more orderly, and their resolutions much less the result of sudden impulse, and the dictate of momentary clamour or enthusiasm.

3. The representative system is of exceedingly great benefit to good government, as well as to public tranquillity, by enabling the people to meet and transact business in smaller bodies than must assemble if they acted for themselves. The reduction of the numbers assuredly would of itself be a material advantage, even if the same matters were discussed before such a meeting, and the same powers were exercised by its members as when the whole body unrepresented and undivided carried on the government. A small number of persons are always more orderly in their proceedings, and less under the influence of clamour and of

sudden impulse than a great number even of the same persons ; and they, who in a private interview will listen to reason and decide rationally, will under the contagious excitement of a multitude shut their ears to all common sense, and resolve on the most absurd things. Therefore, if the supreme power could be subdivided, so as to let one small meeting dispose of one matter and another of another, or if, by a kind of federal plan, every matter should be discussed and determined by the whole community meeting in small bodies and communicating the results of their several deliberations to a central council or executive magistrate, a far more rational course would be taken than if the same individuals were congregated in one large body and decided in its assemblies. So if on each material question the different constituent bodies in any state having a representative government were to instruct their deputies, and those deputies were strictly to follow their directions as ambassadors rather than representatives, a very great improvement would be made upon the ancient constitution of popular government. As a representative system it would sin against all the fundamental rules ; but compared with the old system it would be a substantial improvement.

4. This, however, is not all : the lesser body of representatives so chosen are more responsible than the greater body who chose them. They act more under the influence of being personally answerable for what is done. Each person in a small body feels that he is looked to by his fellow-citizens as the author of the measures adopted. In a large meeting the divided responsibility leaves each individual almost free.

5. But the smaller body is not composed of the same materials as the larger, and now we come to the greatest quality of representation. The multitude of ignorant and foolish persons greatly overpowers the small number of well-informed, and reflecting and wise persons in every community. The whole citizens meeting to discuss measures, decide according to the sense, or rather the folly, the lights, or rather the ignorance, of the multitude, which forms necessarily the great majority of the assembled people. But the representatives are chosen ; they are selected ; they are set apart from the mass, because of some qualities that distinguish them from that mass ; these qualities are such as give a pledge of their greater fitness for the functions of government. In one man it is greater wis-

dom ; in another more ample wealth ; in a third higher birth ; in a fourth greater information. In almost every one integrity or respectable character is a ground of choice, and prudence or discretion, itself a virtue, the parent of some and the guardian of all the virtues, is hardly ever left out of the account in determining the choice of those persons who are to act for the community in the conduct of their most important affairs. Hence the influence of the ignorant, the heedless, the stupid, the profligate, is reduced to a small amount in the conduct of the government, for, generally speaking, the same persons who being unfit to be themselves trusted with power would ill use it, are very capable of making a good choice enough of a representative. The temptations to act recklessly or corruptly are much less powerful in the election of a representative than in the government of the state.

6. This leads to another and almost an equal advantage of the representative principle. The one matter brought before an elective body, a body whose functions are confined to the choice of representatives, is very much more simple and easy than the various matters which are brought before the rulers of a country. Those men who would be wholly unfit to be trusted with the decision of a question touching foreign policy, or jurisprudence, or domestic economy, may be tolerably well able to select a person as their representative. It requires no great degree of information, and no profound acquaintance even with man's character, to tell which of several candidates is the abler, the more discreet, or the more respectable person.

7. The persons thus chosen are on that account, on account of the qualities which recommend them to the electors, less likely to be corrupt, to rule for sordid interests and act from profligate views. But their small number, their individual responsibility render them much more likely to be afraid of acting corruptly, how little soever they may value virtuous conduct or unsullied reputation for its own sake. The same persons, who among a vast multitude might take a bribe, would feel afraid of being bought were they members of a small body. Thus, the electors may be bribed ; and yet the men returned by such foul means, nay, the very men who obtained their election by bribery, may be very far from venturing to act corruptly in administering the trust thus bestowed. Very little reliance could be placed on the purity of a multitude in deciding upon questions, the determina-

tion of which certain possessors of large wealth had an interest in affecting by corrupt means ; yet the same wealthy persons would find it a very difficult matter to tamper with the representatives of that corrupt body. If any one doubts this, let him only consider how often the charge of bribery is preferred against constituent bodies, and generally with the absolute conviction of the imputation being true, however rare the cases may be in which its truth can be proved ; how extremely rare it is to see any charge, even to hear any suspicion flung out against any member of the representative body. I have sat in Parliament for three and thirty years, and I never even have heard a surmise against the purity of the members, except in some few cases of private Bills promoted by Joint Stock Companies. I had been considerably upwards of a quarter of a century in Parliament before I ever heard such a thing even whispered, and I am as certain as I am of my own existence, that during the whole of that period, not one act of a corrupt nature had ever been done by any one member of either house. I question if any one election had ever taken place during the same time, in which many electors had not been influenced by some corrupt motive or another in the exercise of this sacred trust.

8. It is one of the most important benefits of representation that it secures the faithful and regular discharge of the political functions. Wherever the people at large are to rule, they have no chance of constantly applying to the discharge of their public duties : the detail of administration cannot interest them ; it demands too much time and patience to master ; and their ordinary business, the daily labour to gain their daily bread, renders constant attendance at public meetings impossible. We may remember the difficulty of obtaining the attendance at Athens which the law required ; even among that nation of politicians it was necessary to bribe the citizens with pay, and sometimes to compel them by force (Part II. Chap. XVI.). The division of labour never was more happily applied than by the representative principle, which, leaving to the people the office they are fit for, gives to the deputy the work he can best do ; and thus secures it being both done and well done.

9. It must also be borne in mind that the most effectual security for the people's rights and liberties is not their exercising the whole power directly, but their having a select body of able

watchmen to guard those invaluable possessions. A control over their watchmen, the power of naming them, the power of removing them, is all that the safety of their freedom requires them to possess. Any power beyond this, even if they were qualified to exercise it well, would be wholly useless for the purpose. The deputies can just as effectually protect them. But in fact the deputies can more effectually protect the liberties of their constituents than those constituents can themselves. A very large body of men are much less likely to be always on their guard against encroachments. They soon prove weary of watching, and begin to slumber. They are easily split into parties by intrigue ; and they are far from being proof against corruption. Their measures to resist a common enemy, foreign or domestic, are never framed with such wisdom or executed with such vigour as a small body of able and experienced men can bring to the performance of this task. Those men are ever on the watch ; they have no other duties to discharge, no other business to follow. Thus the liberties of the people are more secure in their hands ; and the power of the people, the only power they can safely exercise, that of election, is more likely to be preserved, than if the whole government were in their own hands.

10. It is not an unimportant circumstance in the consideration of this subject, that the representative system enables the scattered inhabitants of the country to bear their part in the administration of public affairs, whereas the congregated masses of the people in towns could alone partake of the government, were each man to appear on all occasions in his own person. Unless upon rare emergencies the country people cannot be brought together. The townsmen are always easily convened. You may assemble the countryfolk once in a year, or once in three years, to choose delegates ; oftener they never can be convened. The townsmen are always ready to attend any meeting. Giving all, both town and countrymen, an equal right to attend, nay, summoning all to attend alike, has no kind of effect. To the townsmen, who live within a few paces of the place where the meeting is held, attendance costs nothing ; to the peasant, who has to give up a day or two of his work, the attendance becomes impossible : he will come now and then to choose a delegate, but never on ordinary occasions. Hence in all republics, before the representative principle was known, the whole government of each state was

necessarily in the hands of the towns. That principle has enabled the other half or more of the people to take their equal share in the administration of the common interests of the whole state.

11. Finally, it is the great, the inestimable advantage which this principle secures, that it gives the people their share in the government, without the inconveniences and mischiefs which we have seen that it avoids. The direct exercise of the supreme power by the whole people is indeed a scheme of polity which may at first sight appear to give them more sway in the administration of their concerns, than the scheme which for a certain time transfers the supreme power to their representatives. But when duly considered it should seem that this is really not the case. In the *first* place it is an abuse of words to call that an exercise of power by any person which is only the appointing him to a function for which he is utterly unfit. Who would deem it any power conferred upon him to be allowed the privilege of cutting off a sick man's limb, or trepanning one who had his skull fractured? But, *secondly*, if the mischiefs of the ignorant and unskilful performance of these functions all fall upon the party himself, the abuse of terms is much more glaring. Who would call it a restraint upon his liberty to be precluded from mangling his own limb, or driving the saw of the trepan into his own brain? The good of the whole is the end of all government; any power inconsistent with that is bad for the whole body of the state. But independently of such views, which belong to another consideration of the subject, when we speak of power being vested in certain hands, we always mean a rational investment, an investment in hands capable of exercising the power bestowed. Lastly, it is much more safe and beneficial for the people themselves, and more beneficial with a view to their power itself, the only point now under consideration, that they should not govern directly and in the mass. If trusted with the whole direct power, or indeed with any portion of the government directly, we may be assured that they never can long retain it. The certainty of its abuse, and the inevitable mischiefs which its unskilful exercise must entail upon the state, will, after a short time, assuredly occasion a revulsion, and the direct power will be transferred to other branches of the community, or to an oligarchy at home, or to a sovereign at home, or to a foreign state; and it will be transferred entirely, without any control being left in the people's hands, even that control

which they are well capable of exercising. The memory of the mischiefs which their incapacity or corruption occasioned will be the security of whatever tyranny is founded upon the ruins of the democracy. Even when the body of the people did not formally exercise the functions of government, yet possessed too constant a control over their rulers, so that the salutary operation of the representative principle was impeded, and the popular voice ruled too directly, we have seen the fatal effects of their misgovernment in propping up the most rigorous tyranny, and stripping the people of all control, all voice in the management of their concerns. The mob influence, which was the mainspring of the Reign of Terror in France, enabled Napoleon to usurp the government, and make it absolute, exhaust the country by his conscription, and lay it at the feet of foreign nations by his wars. The cruel executions which the people called for in England, and the influence of their fanaticism over the Long Parliament, prepared the way first for the military despotism of Cromwell, and then for the restored tyranny of the Stuarts. The French people would have been more powerful in the just sense of the word, and would have retained their sway longer, had they been content to wield only the power which they were fit to exercise; and the English would neither have required a restoration in 1660, nor a second revolution in 1688, had they been satisfied with electing representatives, and abstained from interfering with the exercise of the trust which they had bestowed.

It thus plainly appears that nothing can be more senseless than the opinions of those who have regarded the only liberty enjoyed by a people living under a representative government as that which they have during the election of their delegates. Rousseau, with his accustomed shallow dogmatism, says, that the English are free then only, at all other times "they are slaves"—"they are nothing."* This is not even true of the people's power, as we have seen; but Rousseau confounds liberty with power. The loss of all direct power, if it were ever so complete, would not necessarily work a loss of all liberty. The rights and the freedom of the people would be protected by their deputies, and all encroachments of arbitrary power would be effectually prevented. The only risk would be those deputies forgetting their duty, abusing their office, and joining with the usurpers, oligarchical or

* *Cont. Social*, liv. iii. ch. xv.

monarchical. But this is prevented by the limited character of the trust, and the people retaining the power of dismissing the representatives who have betrayed them. This is all the power which it can ever be necessary to leave in the people's hands in order to protect their liberties ; and we have shown how much more effectually this protection is afforded by the representative than by the direct exercise of their authority.

Such are the great and manifest advantages conferred by the Representative principle, such the evils of obstructing its full and entire operation ; and on these accounts it is that we justly and confidently consider it as the greatest of all the improvements which have ever been made in the science of government and legislation.

CHAPTER IX.

MODIFICATIONS OF THE REPRESENTATIVE PRINCIPLE—THOSE
ONLY AFFECTING THE MODE OF ELECTION.

Two kinds of modification; one regarding the manner of voting, the other limiting its extent—Double Election—Its nature in France—Its evils—Inconsistent with the Representative Principle; duty of electors ill performed; corruption facilitated; minority made powerful—Does not lessen the Popular Power—Combined choice—Manner of Voting—Distribution of Representation—Proportion to population—Errors in English System—Voting by Ballot—Contrary to principle—Ineffectual—Encourages Falsehood—Protects Tradesmen—Useless to Tenants—Means of Preventing Corruption and Expense—Efficacy of Registration—Inefficacy of Ballot—Disfranchisement—Extension of Franchise—Of Electoral Districts.

HITHERTO we have only considered the Representative principle generally, and examined those qualities which belong to it in whatever manner it is applied. But there are various modes of this application, and it is of great importance to explain these. Some of them, though productive of important effects, and tending to modify by extension or restriction the principle itself indirectly, yet do not directly extend or impair it. Others have a direct influence in impairing it, and rendering it less beneficial and less severe.

I. To the former class belong the principle of double elections, the method of combined choice, and the manner of giving the vote.

i. The principle of double election appears to have been borrowed from the complicated voting of the Venetian and other Italian governments. Possibly it might have been suggested by the ancient Federal system, in which the people chose magistrates, and those magistrates appointed deputies, who voted in the congress. It is, indeed, not impossible that the mere exercise of the Representative power itself may have suggested this refinement; because the deputies elected by the votes of the people, too numerous to vote upon measures themselves, vote on these measures, and so it may have occurred that the people were too numerous to vote in the election of deputies, and that

therefore they could delegate to a smaller body the choice of those deputies. But be its origin what it may, the plan consists in the whole body of electors choosing a smaller number to exercise for them the power of choosing Representatives. This principle was adopted in France under the two Republican Constitutions which were established in 1791 and 1795.* It was continued under the Consulship and the Empire; it was retained after the restoration, 1814 and 1815, in the constitution under the charter; and it was only abandoned in 1830 upon the change which then took place. The assemblies which chose the electors were called the "Primary Assemblies." Those which chose the deputies were called "Electoral Assemblies or Colleges." The Directorial Constitution of 1795 gave one elector for every two hundred of the Primary Assembly. The constitution of 1799 and 1804 had a much more complicated principle. The commune (or parish) chose a tenth of their number, which was the communal list; these chose a tenth of their number to form the Departmental list; and these again a tenth to form the National list; so that the number of the primary electors was reduced to one in a thousand; and this thousandth were only eligible to the senate, tribunate, and legislative body by the choice of the public functionaries and senators together.

All such double, or more than double, elections are fundamentally bad, and proceed upon a principle radically vicious.

1. They are wholly inconsistent with the representative principle. If a person is fit to choose an elector, he is fit to choose a representative. He may, as we have seen, be wholly unfit to decide upon a law or a measure of policy, and yet be fit to select some one to act for him in discussing and determining those important matters. But if he is only supposed fit to choose the elector, how is the line of his qualifications to be drawn? It is much easier to determine whether or not any given person is fit for the functions of a representative, than to determine his fitness for an elector; because it is difficult to decide what qualities are especially required for making a man a good elector. This whole process assumes that a person may be fit for being an elector who is not fit for being elected; but it fails to show how that line is to be drawn.

2. The chances of bribery are much more numerous where the

* It was not part of the Constitution of 1793.

electoral body is small, than where it is numerous. The whole people select a few, and these few having no function whatever to perform except choosing others, they are set up as a kind of mark at which all the missiles of corruption may be launched. They are sure to be persons of less respectability than would be chosen as representatives, because the trust reposed in them is incomparably less important and requires less capacity to execute it. Besides their office is only occasional and temporary; they feel in proportion to its less duration less responsibility. Therefore they are in every way more exposed to temptation and less likely to resist it.

3. But a most serious evil of the double election is its tendency to place the power in the hands of a minority of the community. If all the electors of a district choose the deputy there is a possibility, but not a great likelihood, of the minority of those representatives being persons returned by great majorities of the voters, and the narrow majority being returned by small majorities. But this becomes much more probable if, instead of choosing the deputy directly, there is an intermediate election. Suppose a county or department having two thousand votes to be divided into twenty districts, each of which by a Primary Assembly chooses one to the electoral College. If the twenty electors are divided in the proportion of eleven to nine, as to the candidate for the representation, and all the eleven are chosen by fifty-one to forty-nine in these primary assemblies, and the nine are chosen unanimously in theirs, then the candidate who has only five hundred and thirty-nine votes is elected to represent the whole two thousand voters, and the other is rejected who has one thousand four hundred and thirty-nine. This, of course, being an extreme case, is not likely to occur; but in various degrees it is very possible, and the double election gives every facility to intrigue, corruption, and stratagem on the part of the minority. All the districts in which the people are nearly unanimous will be neglected, left unassailed as hopeless; and the effort will be made to bring over or intimidate enough to constitute a majority in those districts where the numbers are more nearly balanced. In each of these the purchase of a few votes will secure the return of an elector, and also the return of such a representative as the great majority of the people would reject. This risk, too, is wholly independent of the other risk arising from corrupting the electors.

We are now supposing the electors to be perfectly incorruptible, and that the effort is made in the primary assemblies alone.

But although these are the serious objections to Double Election, yet it has no direct operation in diminishing the power of the people, or vesting in an oligarchy their influence over public affairs and the course of the government. The government is still popular in every sense of the word, and the people are still secured in the possession of their rights, because they have the power in their own hands of choosing persons who will elect men deserving their confidence, and men removable by the next choice of electors in case they betray their trust. To instruct deputies on all points of their conduct is impossible, because it is impossible to foresee all the events that may occur after an election and before the several measures come under the consideration of the representatives. But to instruct an elector is perfectly easy, because the only point is the simple one of who shall be sent to represent the district, and that choice is to be made immediately and before any change of circumstances can have taken place. Hence the power of the people and their control over the representatives cannot be said to be materially diminished by the double election, nor the responsibility of the representatives be much lessened. Certainly whatever difference is made in both must be unfavourable. The power of the people will be a very little diminished, and the responsibility of the representative a very little lessened.

ii.—There is another way in which the elective process may be modified ; there may be a Combined Choice. One body only of the people may be allowed to name a certain number of candidates, and out of these another class may select the representative. Thus all persons whatever may choose ten candidates, and all persons of a certain income may out of these select the representative. There are not such serious objections to this as to the former modification ; but it is exposed to another which does not necessarily arise against the former ; the choice of so many as ten or more candidates (and they must be numerous to give the selecting class any real power of choice) gives rise to much confusion, and to the great risk of votes being thrown away, and of a minority combining to choose their candidate, while the majority are voting without concert. But the main objection is this, and it is insurmountable. The class which chooses the candidates, or eligible

persons, may usurp the whole election, and exclude the other class altogether. They have only to choose a single candidate who is at all fit for the place of representative, and all the rest plainly and certainly unfit, and the power of selection among the names on the list becomes a mere nullity.

iii.—The manner of taking the vote is the only other modification that requires examination of the class of contrivances now under consideration; and this becomes very important with a view both to the right exercise of the elective power, and the preservation of the peace and the morals of the community.

Three points under this head require our attention—the distribution of the representation, the protection of the voter, the prevention of error, corruption, and expense.

1. The principle which ought to govern the distribution of the representation is as nearly as possible to apportion the same number of representatives to the same number of inhabitants in any district. I say as nearly as possible; for it does not seem an essential requisite to fair representation that it should be rigorously proportioned to the numbers of the people. On the contrary, there are manifest objections to this equal distribution in a country of which the population is very unequally dispersed, and which has towns of great magnitude as well as extensive districts thinly peopled. Suppose the rule of equal distribution were applied to England, its five hundred representatives would be so divided that the metropolis would return fifty-five. So large a body always on the spot, and representing constituencies so numerous also in the immediate neighbourhood of the parliament and the government, would have an influence exceedingly dangerous to the balance of the constitution and the independence of the legislature. The case of Paris is still stronger; for though its inhabitants are much less numerous in proportion, the excessive power and influence of the capital in France is one of the great practical evils of that country. In either case the formation of a party, and the acting in concert, is far easier when so many members come from the same place; and to this must be added a consideration common to both countries, but of especial weight in France, that the natural influence of dense masses of people, independent of their weight in the representation, seems to warrant rather giving them a smaller proportion of members than is answerable to their numbers. But it cannot be doubted, on the

other hand, that the giving to a comparatively insignificant town like Kendal or Harwich, of ten or eleven thousand inhabitants, as many representatives as to the West Riding of Yorkshire, with its million of people, is a gross absurdity, and contrary to the very first principles of the representative system. The electoral system in France is free from all possibility of this evil; for the deputies are chosen by districts, without any regard to towns.

Another principle ought to govern this distribution; each class and interest in the community should be represented. Suppose there were one important branch of trade confined to a single district, and the number of inhabitants in that district did not warrant its returning a deputy with a view to population; still it should be represented with a view to the trade driven by it. So, important professions should be represented; and important classes of properties. Our English system sins against all these canons, and sins grievously. It allows but one test, the ancient distribution of men into towns. Harwich and Kendal are represented—the former by two members, the latter by one only—because these are towns; while districts of the country containing ten times as many inhabitants are allowed about the fifth part of a member each. Again, property is the qualification of a voter, and yet only one kind of property is regarded; so that the greatest mass of the property next to the land, the eight hundred millions belonging to the public creditor, are wholly unrepresented.

2. The protection of the voter's independence in his exercise of the franchise is an object of primary importance. As workmen and labourers are under the influence of their employers, tenants of their landlords, and shopkeepers of their customers, it has been thought by many reasoners necessary that we should enable these dependent classes to give their votes without any control; and the obvious method of doing this is said to be the power of secret voting, or the ballot.

The advantages of this mode of proceeding are obvious; and they are exactly applicable to the case: the remedy is a specific; it is directly calculated to arrest the evil. But there are considerations of importance which have not always been sufficiently considered by the advocates of the plan. Of these one of the most important is this: that the elective franchise is in the nature of a public trust or duty, and ought, therefore, to be executed under the responsibility of the functionary, the elector's conduct

being known. It is certain that a much more important vote than the elector's is the representative's ; and it is as certain that the representative is exposed to equal disturbing influences in the discharge of his duty. How many men dread the frown of the court ! How many professional men are exposed to serious injury from the possessors of power ! How many naval and military men are dependent upon the favour of the government, and liable to be all but ruined by its hostility ! Yet no one can seriously contend that votes in Parliament should be given secretly ; because the constituent has a right to know how his representative votes. It must be admitted that the reason for publicity in the elector's case is not so strong ; yet is there a reason, and of nearly the same kind. For all the community are interested in the honest and enlightened exercise of the right by each voter ; not to mention that where there are any classes excluded from voting, they are represented by the classes which possess the franchise, and have a right to know how it is used.

But it is another argument against the ballot, that men can never be prevented from trying to influence those under their control ; and that, do what you will to prevent it, they will always seek to discover how their workmen, tenants, and tradesmen have voted. Indeed the whole argument for the ballot assumes that they will do so ; it proceeds upon the assumption that one class has power over the other, and is resolved by all possible means to exert this power. Then how can the unfortunate voter, who has secretly given his support to the adversary of his patron, conceal his act, except by a course of falsehood—a course maintained from one election to another ? Cicero's description affords but a slender recommendation. "The ballot," says he, "is a favourite with the people, because it gives men an open countenance, while it conceals their thoughts, and lends them a licence to do whatever they please." * Surely these are very powerful reasons for disliking such a plan ; unless there be a certainty, not only that the evil of compulsion is generally prevalent, but also that the remedy will prove quite effectual.

Both of these positions, however, appear to be more than doubtful. It is certain that the advocates of the ballot have both

* *Grata populo est Tabella, quæ frontes aperit hominum, mentes tegit, datque eam libertatem ut quid volunt faciant.*

exaggerated the malady and over-praised the cure. It is, perhaps, nearly as certain that the adversaries of the ballot have considerably exaggerated the evil consequences of it; but chiefly because, like its advocates, they have overrated the effects it is likely to produce. The truth really is, that very many of the voters, even in the classes for whose protection the ballot is proposed, would vote exactly in the same way were their vote given ever so secretly. The circumstances which create the influence so much dreaded have a most direct and universal operation in producing a disposition of the inferior to follow the course of the superior party. Almost all tenants take an interest in favour of their landlord, and have a pleasure and a pride in supporting the candidate of his choice. The majority of workmen always feel disposed to support the party of a kind and considerate employer; farm labourers, without any exception, do so; and the greater part of manufacturers or artisans would follow the same course; though certainly these last are not so much under the employer's influence. Shopkeepers are the class to whom the secrecy would give the greatest protection, and in their case the ballot would have most effect. As for tenants, even the few who would go against the landlord could not be effectually protected; because whatever tenant was suspected would either be required to pair off with an adverse voter, or to abstain from voting altogether; and thus the whole protection of the ballot would be defeated.—Some other supposed advantages of the ballot we shall have occasion to consider under the next head.

3. The means of preventing expense, corruption, and error, are next to be examined.—A well-devised system of registration seems one of the most effectual. If care is taken to scrutinize each claim at the time when there is no contest to excite the passions and prevent just decisions, the process of voting will be very short and very simple. But all this difficulty, and the necessity for a register, assumes that the franchise is confined to particular classes, of which we are hereafter to discourse. Appointing a variety of polling-places, and having all the elections over in one day, is a most wholesome expedient for preventing expense and checking intrigue. Excluding all but residents from a vote is another device most useful for attaining the same end, and there can no reason whatever be given for allowing any person to vote

in more than one place. The attaching a vote to all property of one kind, as our law does, and to property of another description only giving the right when combined with residence, is contrary to every principle.

The prevalence of bribery is the most difficult subject with which we have to deal in considering the defects of the representative principle; and the ballot has been proposed with much confidence by sanguine men as the best means of attaining this most desirable object. I own that I cannot at all adopt this opinion. Suppose the wish for a seat to remain unabated—the means of corruption to continue unimpaired—the disposition to bribe and the readiness to be bribed being the same, I conceive that the secret voting would only give rise to an arrangement much more likely to extend corruption than to restrain it. A class of *vote-contractors* would be formed, who would bargain with the candidates, or with their agents, or with their friends, to receive so much in the event of the election being won, and nothing in the event of it being lost. Suppose such an agent bargaining to receive 1000*l.* on these terms, he immediately sets about agreeing with three or four sub-contractors, each of whom is to have 100*l.* or 150*l.* if the election is won, and not otherwise. These sub-contractors have an interest in bringing as many votes as they can buy for five-sixths of the sums agreed upon, taking to themselves the remaining sixth; and each voter whom they bribe is to be only paid in the event of success. Thus every contractor, sub-contractor, and voter is interested directly in the success of the candidate; and a set of agents is created such as no election on the old plan can ever call into existence. Who can for a moment doubt that this system of corruption must prove more active and more universal than any that now exists?

A plan has sometimes been adopted of disfranchising places against which general corruption has been clearly proved. This seems a very rude and clumsy remedy; and it is objectionable further on the ground that the innocent are punished, both now and hereafter, with the guilty; and above all, that it is a remedy which never can be applied to the corruption exercised in large places. There were above two thousand persons proved to have been bribed in one Liverpool election. Did any one ever dream of disfranchising that large town? And yet no such extensive

bribery was ever shown to have been carried on in any other place. It must always be borne in mind that the franchise is bestowed on a place, not as a favour or as a privilege to its inhabitants, but in order to obtain from it the contribution which is due towards the formation of a legislature for the whole country.

A very large extension of the franchise appears to promise the most effectual and the safest remedy. If there were no small places entitled to return members—if no place or district under five thousand voters were allowed representatives—there would be no such thing as bribery known, and one of the greatest mischiefs of popular government would be wholly and for ever removed.

CHAPTER X.

MODIFICATION OF THE REPRESENTATIVE PRINCIPLE—RESTRAINTS
UPON THE RIGHT OF VOTING.

Modifications limiting the Right of Voting—Combined Choice—Representative Qualification—England; Scotland—Inconsistency of English System—Error of extreme Reformers—Elective Qualification—Pretended grounds of this—Real grounds—French and English Qualification—English Criterion of Respectability the worst—Rule “Once a voter always a voter”—Exclusion of the best persons—Objection to Property Qualification—Immorality encouraged—Qualification a recent Invention—History of Representation in this respect—Form of Government not affected by Qualification—Supposed advantages of Qualification—Good Representatives—Education Qualification—Check to Corruption—Extension of Suffrage and of Electoral Districts.

NONE of the expedients which we have been describing for modifying the principle of representation has any tendency to render that principle more impure, to impair its force, or to interfere with its use in supporting popular government. On the contrary, all but the Double Election tend to preserve, and purify, and improve it.

II. We are now to consider modifications of a very different nature, the object of which is to impair and, as it were, to adulterate the representative principle, rendering the political system less popular in which they are introduced.

1. We have examined the modification, which consists in giving to the greater portion of the people the power of selecting candidates. This modification belonged to the first class; but it would have belonged to the second class, if the choice of candidates had belonged to a select class of the community, or persons of a certain income, and the people at large could only choose out of the number so selected. In like manner, if the people by direct or by double election chose the eligible persons, and the executive government select from them, the modification belongs to the class which we are now considering, unless the people are enabled to choose absolutely the candidates, and can protect

themselves by choosing only a single really eligible person for each vacancy.

2. Another modification by which the right is restricted is the requiring certain qualities to be possessed by the persons chosen as representatives. Sometimes a greater age has been required than that at which the law allows persons to manage their own affairs. In France, after the Restoration, no one could be returned to the Chamber of Deputies who was not forty years old. Sometimes the person elected was required to be of the class of electors. This was the law in Scotland before the year 1832. A property test or qualification, however, is the most common. In England, all but members for the universities and peers' eldest sons must have 600*l.* a year clear in landed property to sit for counties, and 300*l.* to sit for boroughs; the eldest sons of persons qualified for county members being presumed to be themselves qualified. It must be obvious that nothing can be more absurd or more inconsistent with itself than this qualification; for while the constitution of parliament recognises the right of the towns, that is the trading classes, to be represented, it compels them to choose for their deputies men who have property in land. As well might it compel counties to choose men in trade for their representatives. A man may have a million in the funds, or as much capital invested in commerce, and he is unfit to represent a commercial town, unless he has also 300*l.* a year in real estate. This law, it is needless to say, has always been evaded. The member being only obliged to have his qualification at the two moments of his being elected and taking his seat, obtains a conveyance of property, which he, immediately after taking his seat, re-conveys.

It must, however, be added that nothing can be more speculative or less practical than the great objection which some extreme reformers have taken to the representation qualification. They think it excludes men of the middle or inferior classes from parliament, and they therefore propose not only to abolish this qualification, but to pay the members for their services, as they were paid in ancient times. The only result of this would be a considerable increase of bribery. The payment might have some effect, though but little, if any, because the persons of that class would hardly ever choose to elect one of their own body, from the jealousy which always prevails of one another, and leads them

to prefer their betters. But the removal of the qualification would have no such effect at all. What place, what body of men, would choose artisans or day-labourers to represent them, were the right of voting ever so general? And what artisan or small tradesman could afford to give up his calling and his livelihood, in order to manage the affairs of the country? That men in such circumstances would be more accessible to bribery as representatives than men of independent fortunes needs not be proved. It is self-evident. Their being eligible, therefore, and being in consequence elected, would be no advantage whatever to the community.

3. But the most important of all modifications in restraint of popular rights, is the affixing a certain qualification to the electors, and thus confining the right of choosing representatives to a certain class of the community. The origin of this is partly the pretended alarm about popular violence at elections, partly and chiefly the notion that the people at large cannot safely be trusted with a voice upon the public concerns. The former reason was put forth in the fifteenth century (8 Henry VI.) by our parliament, when they wished to exclude the poorer freeholders from exercising the franchise, the members for counties having before that time been chosen by the County Court, composed of all freeholders without exception, whereas the new statute confined the right to persons possessed of 40*s.* a year, equal to as many pounds at this day. The same alarm has also been constantly given as the reason for our courts of law leaning against general rights of voting in the choice of corporate officers in towns; and its operation had, previous to 1832, by degrees deprived all but a select few among the townfolk of the elective franchise. The Scotch parliament, in the fifteenth century (1469), by a single act confined the right of holding corporate offices to the existing magistrates, who were empowered to fill up all vacancies in their number; and these magistrates alone chose the members of parliament. The towns of the United Provinces, as we have seen, took a similar course a century and a half later; and it has been pretty generally pursued in other parts of the continent.

But the true and the operative reason for this important restriction is the belief that the people cannot be trusted. They who so think, and unfortunately they have always been a great majority of the persons possessing influence in the legislatures both

of France and of England, have therefore devised a means of confining the right of voting to what they consider as the trustworthy portion of the people, those possessed of a certain amount of wealth, and those possessed of certain corporate rights. The wealth, or the rights, are not so much the matter deemed to be essential as the respectability of the parties. The pecuniary circumstances are supposed to indicate a certain degree of station, and it is thought that persons of this station, having some stake in the country, but still more, having some information, some knowledge of affairs, and some integrity, will not abuse the right of choosing representatives.

In France the payment of a certain sum in direct taxes is the criterion of respectability. A considerable sum is now required. In the first constitution (1791) only the payment of three days' labour (about half-a-crown) was required for the electors in the Primary Assembly ; but two hundred days, or about 12*l.*, for those of the Electoral Colleges. This criterion is not liable to many of the objections which lie against the English test ; but it is objectionable, as making the rights of the constituent body depend upon the revenue laws, which may at any moment be so changed as to disfranchise or to enfranchise whole classes of the people.

It is needless to dwell upon the great inconsistency of the English plan, as exemplified in the line which is drawn to sever the voters from the community at large. Thus wealth is taken as a criterion of respectability, and yet a man with a million of funded property, or a million lent upon bond or mortgage, has no vote, while the renter of a hovel is qualified if he pays 10*l.* a-year to the owner. But the gross absurdity is the taking wealth as a criterion, and affixing so small an amount as makes it no criterion at all, even considering wealth to be in certain amounts a true test. If it is to be taken as a criterion, the qualification should be raised, so as to indicate that there is wealth enough possessed to indicate respectability. The 10*l.* rent, or the 40*s.* freehold, really is as bungling a test as a standard of a recruit's fitness for the service would be, which should require that no one be enlisted under four feet high, with the view of providing that the soldiery should be strong enough to go through their duties. Another gross inconsistency of these qualifications is, that while we pretend only to take them as tests of respectability, we no sooner apply them than we forget this, and regard the property as some-

thing sought after for its own sake ; else, why require such property to remain vested in the voter ? If the possession of certain pecuniary means at any one time showed him to be of that class which may safely be entrusted with the elective franchise, does his loss of these pecuniary means degrade him to an inferior class, and make him who was trustworthy last year not to be trusted this ? Are his industry, sobriety, information, judgment, all gone with his money ? At least let us be consistent with ourselves, and admit that, having once been proved to be a fit person, he should be recognised as such ever after. The rule, to have any colour of consistency with itself, should be—"Once a voter always a voter."

But it seems, if possible, more absurd to adopt such a test, or any test at all, unless there is an absolute impossibility of obtaining the quality itself directly, or at least by much easier methods. If the possession of wealth is allowed to be a criterion of sense and information, all must admit it to be liable to error, as the most silly and ignorant of men may have it. So, if it be taken as an evidence of industrious and sober habits, or of general respectability, the same uncertainty must be allowed to attend it. But education actually received, is a direct proof that the thing in question belongs to the individual. So attending regularly an institution for mental improvement is incompatible with ignorance, and with an idle, dissipated life. But we reject these qualifications altogether ; just as if a chemist were in search of gold to take *aqua regia*, in which peradventure it might be dissolved, or peradventure it might not, and pass over a piece of the virgin metal itself or the grains of gold dust.

The exclusion which our test effects of some most meritorious and valuable members of society is a grievous evil, and affords a very strong objection to it. All lodgers and boarders, all who have no house of their own, are excluded from the borough representation. The most ingenious artisans ; the men whose expertness and industry are the props of our commercial greatness ; almost all who have carried the arts to so great perfection as rivals the finest performances of any age or country ; the whole body of our mercantile navy, of those whose lives are spent in driving our vast commerce, braving all dangers by their firmness, and overcoming all difficulties by their matchless skill ; most of our literary and scientific men, of those whose unwearied labours illustrate their country and adorn their age, and elevate their

race—all are disfranchised by a law formed for the avowed purpose of drawing the line between ignorance and intelligence. No doubt it does draw the line, and it leaves information on the excluded coast.

But there is a very serious objection to any qualification which depends on property alone. If, as has been already stated, it is low, no test is afforded of respectability; and if it is too high, vast numbers are excluded. In truth, the low qualification which admits the greater number, is wholly objectionable on the principle upon which alone all such tests rest, and it either should be much higher, when it would create an oligarchy—or it should be much lower, when it would cease to be a qualification at all either for good or for evil. The mischief of a low qualification is not to be denied or got over. It creates a set of men in every place, limited in number, who have the sole possession of the elective right, and who are thus set up as marks singled out for the arts of the dealer in corruption. There seems no reason to expect that any legislative measure or any judicial severity will ever apply an effectual cure to this crying evil. As long as the place of representative is an object of all men's ambition, many wealthy persons will seek it by means of bribery; and their zealous friends will bribe where themselves might be disposed to refuse an honour so purchased. As long as the means of corruption are possessed, and are thus applied, small constituencies will be the victims of the temptations afforded; and the only real remedy is greatly extending the number of voters, or, if that is impossible, greatly increasing the size of the electoral districts into which the country is divided. If we retain a superstitious veneration for the names of those districts; if we cannot bear to see a new division of the kingdom for political purposes; if our old local associations are too powerful to suffer the outrage of such changes—it is all very well, and we gratify our romantic feelings; but then, let us not shut our eyes to the price which we pay for this sentimental indulgence; it is the perpetuation of the most corrupt practices by which a free people can be debased and degraded; and the spreading of an immorality so glaring, that the lovers of liberty itself are fain to doubt whether popular government may not really be bought too dear at such a cost as the sacrifice of public virtue.

It deserves to be further considered by those who are so friendly

to exclusion, and so desirous of "walking in the old paths," that qualifications are an invention of after times, having had no place in the original constitution of this country, or indeed of any country which early in the feudal history adopted the system of general assemblies. The barons, great and small, were originally summoned to the council, colloquium, or Parliament, without any distinction. Afterwards the townsfolk were called upon to appear, sometimes at first in person, as in France upon several occasions; generally on the continent, and always in England, to send representatives. The lesser barons, in this country and afterwards in Scotland, were called to send deputies instead of attending personally. That those freeholders both in England and Scotland all originally voted without any exclusive test whatever, we have the most positive evidence. But there is every reason to believe, that originally the townsfolk also voted without any exception. This appears certain, because there is no record in our history of any one law restraining the franchise and fixing a qualification. No one was, indeed, anxious in those times to be elected; and that which it was reckoned a burthen to receive, it could not be deemed an advantage to bestow. But in hardly any case has the older or common law drawn distinctions and affixed proportions or sums. It would be hard to name any other instance than dower, which was taken from the civil law and founded upon a natural and rational partition of the property into three parts, of which the children should have one, and the deceased's nominees another. The most ancient constitution of this and other countries, therefore, was wholly unacquainted with the doctrine of qualifications.

But this would be nothing like a decisive reason against them, were there material benefit to be derived from their introduction into any given constitution. It may at first be thought evident that this must depend on the kind of constitution into which it is proposed to introduce them. A little more attention, however, to the subject will satisfy us that it is not so, and that the arguments for and against them are the same, of whatever form of government it is proposed to make them a part. The Representative principle can never in any scheme of polity have an object other than admitting the people to a share in the government. The share may be greater, or it may be less; and its amount will depend wholly on the power which, through their

representatives, they are permitted to exercise. But it will not at all depend upon the manner in which those representatives are chosen, or the proportion of the people allowed to choose them. We may suppose a case in which the representatives of the people should have hardly any real influence. If the patrician body or the sovereign had the sole right of originating all measures, or if the power of the purse were taken from the popular assembly, or if a majority of the three estates, the patricians and the sovereign, for example, could legislate for the whole, it is plain that the government would only in name be popular, and it would be as little popular if every man of twenty-one chose the representative as if only men having a hundred a-year, or paying ten pounds a-year in direct taxes, had the elective franchise. In like manner it would be a popular government if the representatives alone could originate measures, or if the sovereign and the popular assembly could legislate for the whole; and it would be popular whether all the inhabitants, or only a certain proportion, were the electors of that assembly. If indeed the qualification were so high as to throw the choice into the hands of a very small number of the richer and nobler classes, if, as was the case in England before 1832, a majority of the Commons were returned by the patricians, or by those under their immediate control, the government would become aristocratical, but this would not be in consequence of the qualification, properly speaking; it would be in consequence of the people being wholly excluded, and their representatives being chosen for them by the aristocracy, and not by themselves. It is not a Representative Government at all in which such a choice is made. The aristocracy choosing deputies does not constitute a Representative Government. If the British House of Commons were abolished, the government could in no just sense be called Representative, merely because the Irish and Scotch Peerage were represented by deputies of their own choice. We have seen that the popular choice is an essential condition. We mean by a Representative Government one in which the body of the people, either in whole, or in a considerable proportion of the whole, elect their deputies to a chamber of their own. But there are degrees in this. Although, therefore, the qualification in the sense in which we are now taking it would not alter the frame of the constitution according as it was pitched higher or lower, it might make that constitution more or less popular in a

considerable degree, and increase or diminish the influence of the patrician order, and to a certain degree of the sovereign, according to that scale. If the common people were wholly excluded from voting, it would be easier for the influence of patronage, wealth, rank, to exert itself in elections, and the two other estates would thus obtain some kind of influence over the deliberations of the popular assembly. It is equally evident that this ought never to be permitted beyond the narrowest limits, that is to say, the weight which wealth, rank, and power always must possess in every community. To restrict the right of voting for the purpose of augmenting this weight is wholly contrary to the spirit of a mixed government, because that government assigns to each order its own place; and if the patrician body are firm of purpose, they have quite sufficient protection for their privileges in the direct power which they possess of rejecting any measures proposed by the other bodies, and of proposing any measure of their own. If each of the three estates, or of the two, supposing only that number of estates, possess not a veto on all measures, the government is only in name mixed. In that case the amount of the qualification either becomes indifferent, when the government is in reality aristocratic, or it ought to be extremely low, perhaps not to exist at all, when the government is in reality democratic, though it would still be democratic though the qualification should be very considerable.

What then is the advantage of a legitimate kind sought for in a qualification,—and honestly sought for,—not for the purpose of individually aiding the schemes of the other orders, but of fairly working out the principle of the government? It is confined to these two particulars, the securing a better choice of representatives, and the preventing corruption. The former consideration depends upon our distrust of the intelligence of the people at large; the latter upon our distrust of their virtue; and both upon our distrust of the influence which the more intelligent, more virtuous classes can exercise over the inferior members of society. As for the pretence that confusion or riot or any kind of disorder, or even the least inconvenience could result from the utmost extension of the franchise, no one can now affect to be influenced by it. The Representative principle at once precludes the possibility of any such mischief, because it enables us to subdivide the voters in any degree required by the convenience of the public. Let us

therefore consider the only real advantages ascribed to the qualification, a good choice of representatives, and a check to corruption.

1. Some reasoners have assumed that if all the people were to elect, the classes who are without any property, being the most numerous, would overpower the proprietary classes, and return representatives who would interfere with the rights of property, throw all public burthens upon its owners, perhaps decree its confiscation and division. This assumes first a grosser degree of ignorance and thoughtlessness than can well be supposed in the people of any civilised community, who must know that the only security of society, and the best security for the labourers themselves, arises from the security of proprietary rights. But it also assumes that there is to be a union of the working classes all over the country in order to return this majority. Then if they are likely to combine for the purpose of indirectly effecting the confiscation of property, why do they not now combine for the purpose of seizing upon it directly? For assuredly they possess this power in every country, and yet in none is there any more alarm felt respecting such a measure, than there is an apprehension of the horses in the country combining to kick, or the oxen to gore men to death.—Again, the argument assumes that the other orders of the state are to remain passive spectators of the measures of spoliation, and neither to exert themselves before they are adopted, nor to reject them afterwards when they are presented for their acceptance.—Lastly, the argument assumes that wealth, rank, talents, learning, virtue, are to have no influence whatever in determining the choice of the common people, who are supposed to be so inferior in all these qualities, and who assuredly are so in some of them; whereas many persons have fears of a totally different kind, and dread their being too much under the sway of their superiors. I well remember, when I said to the late Duke of Bedford that his zeal for Parliamentary Reform was all the more creditable to him because it was so disinterested, he having then four close seats and two others which were almost secure: “Not so very disinterested,” was his reply; “for I doubt not I should influence the return of a considerably greater number of members if the suffrage was universal”—which, however, he did not altogether approve. The truth is that the alarms of those who expect a new set of men to be chosen were the whole people instead of a sixth part of them, as at present, represented in Par-

liament, are founded upon a profound ignorance of human nature, and of the relations in which men stand to each other in every social system.

At the same time it must be admitted that some restriction of the franchise would be most desirable, in order to diminish the influence of profligate adventurers, mere traders in politics, and to lessen the risk of popular clamour carrying bad and obstructing good measures. The test of a good education is the best by far, nor does it seem of difficult application. My Education Bills of 1838 and 1839 introduced this as a qualification for voting in parish school meetings; and I then declared it to be one advantage of its adoption for this purpose that it might so easily and so safely be extended to the Parliamentary franchise.

2. That the extension of the franchise tends to the increase of bribery, cannot be denied. Nor is there any answer to this great difficulty except what is to be found from considering that, if the qualification must be raised for this reason, we have no alternative but raising it so high as to exclude nine in ten of the present race of voters both in England and in France. But it is most important to observe that the extension of the franchise brings along with it the great and effectual remedy for all corruption. If the universal admission of the people to choose their representatives is accompanied with the abolition of all constituencies under five or six thousand voters, the most effectual check will be afforded to all corrupt practices. It is indeed true that the number of the voters is the real cure, and not the mere extension of the franchise, because a numerous body of a higher description would be the less accessible to bribery. But the division of the country into larger electoral districts, that is, into larger bodies of voters, is greatly facilitated by admitting all classes to vote, and this should be an inducement to confer upon the people the benefits which such an extension in other respects is calculated to secure.

CHAPTER XI.

CANONS OF REPRESENTATIVE GOVERNMENT.

Freedom of the Representative—Non-interference of the People—Overawing the Representative criminal—Representation should be direct—Choice not to be combined—No Representative Qualification—Distribution of Representation by importance of Classes—Numbers alone an insufficient criterion—Great disproportion to population improper—Electoral districts to be large—Elective franchise extended to all educated persons—Secret voting inexpedient, except for tradesmen.

FROM the inquiries in which we have been engaged within the compass of the five last chapters certain general principles may be deduced as governing the theory of representation; and it may be convenient here to state these, as the Canons which may be said to rule the system.

I. The deputy chosen represents the people of the whole community, exercises his own judgment upon all measures, receives freely the communications of his constituents, is not bound by their instructions, though liable to be dismissed by not being re-elected, in case the difference of opinion between him and them is irreconcilable and important.

II. The people's power being transferred to the representative body for a limited time, the people are bound not to exercise their influence so as to control the conduct of their representatives, as a body, on the several measures that come before them.

III. Any proceedings on the part of the people tending to overawe or unduly to influence their representatives upon any given question, though no outrage should be committed, and only an exhibition of numerical force be displayed for these purposes, are contrary to the whole nature of representative government, and in themselves revolutionary, being criminal in the people and doubly criminal in any of their representatives, who thereby commit a flagrant breach of duty.

IV. The best sort of representation is the direct, in which the deputies are chosen by the people, and not by electors whom the people choose.

V. The combination of any other choice or veto with the popular choice is greatly to be reprobated, as an impairing of the pure representative principle; so the representative body itself should have no power of expelling its members except for infamous offences, or the non-payment of lawful debts.

VI. The selection of representatives ought to be free, and the whole community open to the choice of the electors, without any restriction whatever upon eligibility except the period of infancy, or conviction of infamous offences, or actual insolvency declared by judicial sentence.

VII. The distribution of the representation should be such as to secure representatives of all the great classes in the community, which are sufficiently numerous in the combined ratio of the importance of the classes and the numbers comprised in them.

VIII. Population alone cannot safely be taken as the criterion of numbers chosen to represent, and any arrangement is to be reprobated which should give one very large town the choice of too many representatives, by giving it representatives numerous in proportion to its population.

IX. Population should not be so far neglected as to give great inequality to the electoral districts, thus enabling a small body of the people, by their representatives, to control those of a much larger body.

X. Districts should be formed for representation so large as to prevent the corruption of the voters, by the candidates or their friends.

XI. The choice of representatives should be entrusted to all persons of full age, unconvicted of infamous offences, who have received a good plain education; and if a property qualification is adopted, no change or loss of property ought to disfranchise a person once recognised as fit to exercise the right.

XII. The manner of voting should be such as to protect the voter's independence; but the secret vote would in most cases have little influence, and chiefly in the case of tradesmen, while it is liable to grave objections, and is a positive evil if the suffrage be not nearly universal.

CHAPTER XII.

APPLICATION OF THE REPRESENTATIVE PRINCIPLE—FOUNDATIONS
OF MIXED GOVERNMENT.

Universality of the Canons—Risk of popular interference—Its limits—Aristocratic interference through the People—Interference with Elections—Restriction of Franchise does not affect Democracy—Illustrations from the English Commonwealth; the Dutch; the French—Illustrations from authors; Harrington; Sidney; Milton—Influence of the other Estates over Popular Representation—King's friends in England—This influence now more difficult—Direct interference of the other Estates criminal—True theory of the Constitution—Securities of the other orders against popular Usurpation—Unwillingness to go to extremities—Defensive Physical Force—Resources of the Sovereign and Aristocracy—Resistance necessarily the foundation of Mixed Government—Mutual right of resistance—Its limits—True use of the doctrine—Objection answered.

THE principles which have been laid down respecting representation, and the observations made respecting its operation on the civil polity of states, are of universal application. They are not confined to one form of government, but extend to every kind of constitution into which the representative system can be introduced. It is however manifest that only two forms of government are compatible with this system, Democracy and Mixed Government. If it be introduced either into a pure aristocracy, or a pure monarchy, the constitution must of necessity undergo a great change from the admixture thus effected by the partial addition of the popular scheme of polity.

1. In a democracy the representative principle has both the freest scope, and is the least exposed to danger of either being impaired or destroyed. The most serious risk to which it is exposed arises from the impatience of the people, and their disposition to take back a portion of the power which they have entrusted to their deputies, by controlling them in its exercise on questions of a peculiarly interesting nature, contrary to the second of the Canons given in the last chapter. The peculiar importance of any measure, either of general legislation or of administrative policy, affords no excuse for this interference; because each successive occasion will never fail to assume a character of extraordinary im-

portance as the present always does with the bulk of mankind, who habitually fall into the error common to our moral and our natural optics, of mistaking near objects for great ones. That no occasion will ever arise where in a democracy, as in a mixed Government, the gross misconduct of the representative body will justify popular interposition, cannot be affirmed. But these occasions are extremely rare, and they are of a revolutionary nature; they are occasions that justify resistance to the established government. In a democracy it may safely be asserted that no occasion will justify the people acting for themselves, and in defiance of their representatives, that would not justify resistance to the sovereign in a monarchy. The cases are precisely similar, and rest on the same principles.

2. The representative system is exposed to another risk from the efforts of powerful individuals and parties to render the government less democratic, and substitute an aristocratic influence for the unmixed dominion of the people. These attempts are almost certain to take one direction, the interference with the representative functions, and introducing popular control. As long as the system remains entire, and the deputies exercise the powers of government, their selection by the people, their responsibility to their constituents, and the powers possessed by the representative body, remove all chance of any faction succeeding in changing the government. But it is otherwise if the supreme power, or any portion of it, be resumed by the people. Then the arts of intriguers, and the corruption to which they resort, make the chances of success far greater. It is also very natural to consider that the representative system supposes in a pure democracy a large extent of territory, else the people would most probably have retained the government in their own hands. Hence popular interference means not the interference of the whole people, nor even of the majority, but the excitement and agitation of some two or three great towns, which may be worked upon by the arts of crafty men; and thus hold out a prospect of enabling an aristocracy, or an oligarchy, to obtain the preponderating influence in the state. Therefore such designs are always sure to be directed towards the resumption of power by the people, and the impairing, perhaps the final destruction, of the representative system.

3. The third danger to which the principle is exposed in a democracy is the interference of parties or powerful individuals with the exercise of the right of election. By means of factious arts

and delusions, and by corrupt practices, the choice of the representatives may be so influenced as to weaken the hold of popular principles over them, and thus to prepare the way for a change in the government after infringing the purity of the representative system. As, however, this course cannot be effectually pursued in a state where there are no privileged orders, from the difficulty of obtaining the consent of the bulk of the people to their own degradation, and from the watchful jealousy which they usually show of all interference with their choice of deputies, though they are far from being as constantly on their guard on the subject of measures which they often scantily comprehend, we may assume that this is by no means an imminent hazard, to which in a democratic commonwealth the representative principle stands exposed.

It may here be observed that the restriction of representation, by excluding large classes of the people from the elective franchise, by no means renders the government other than democratic. We should be guilty of an abuse of ordinary language were we to term such a constitution aristocratic, or oligarchical, or mixed. If we look indeed to the great authorities on these subjects we shall find them all treating a government as republican, by which they usually mean democratic, provided any considerable portion of the people exercise by their delegates the supreme power. Thus the Commonwealth men of the 17th century, like the old Romans, never were very nice in weighing how large a proportion of the people influenced the government, or how long their delegates retained the trust in their own hands, and with how little reference to the wishes of the nation at large they exercised their powers, provided the supreme power was in the hands of many, and not of a single chief. The Long Parliament was elected by the decayed burghs, as well as the great towns and counties. Almost all the negotiations with Charles I. were confined to the powers which the parliament should possess, and turned not upon the mode of its election. The Independents, when they obtained the chief sway in the House, framed a plan of government which only dealt with the parliament's prerogative; and it was not till 1654, under the Protector's constitution, that the decayed burghs were disfranchised, and their members given to the counties.*—

* This had been proposed August, 1648, by the Council of Officers. In Cromwell's "Instrument of Government," the universal qualification was the possession of 200*l.* (equal to 500*l.* now) of any kind of property.

So too the Dutch republicans deemed their government a commonwealth long after the principle of self-election had been introduced into their cities, provided the Stadtholder's prerogative was kept subordinate to the authority of the States.—In like manner the republicans of France were much more anxious about preventing a return of the royal family, and a revival of the patrician order, than about the extension of the right of election to the whole body of the citizens. The constitutions which in those countries were formed to the exclusion of large classes from all direct influence on the government, were all Democracies, though not of a pure and simple kind.

As for reasoners upon purely speculative grounds, they appear to have been equally indifferent to the question, except only that some, as Harrington, in sketching the outline of an imaginary commonwealth, have given extensive rights of election.* In all the discourse of Algernon Sidney upon Government we see constant indications of a rooted dislike to monarchy and ardent love of Democracy; but not a sentence can we find that shows the illustrious author to have regarded the manner in which the people were represented as of any importance; while Milton so entirely summed up his Democratic opinions in the "refusal of one man and the having no House of Lords," that he was intoxicated with joy at the revival of the Long Parliament after Richard Cromwell's deposition, and strenuously contended for the people's representatives being chosen for life.† Both those great men might well take for their motto the lines so appropriately quoted by one of them as describing his faith—

"Manus hæc inimica tyrannis
Monte petit placidam sub libertate quietem."

It would be difficult to find a more remarkable illustration of the progress which political philosophy has made since those days, than the disregard of the representative system, in all but its name and outward appearance, by the most illustrious friends of popular government, in the age when the freedom of England was, after a long struggle in the senate and in the field, finally won.

In a Mixed government, whether aristocratical or monarchical,

* He gives it to every man of thirty years old. But his Commonwealth has also a law against the acquisition of unequal property, and for the rotation of offices.—(*Oceana*, 101.)

† *Prose Works*, p 441 et seq.

the consideration of most importance which offers itself respecting the representative system is its tendency to derange the balance of the constitution and convert it into a democracy more or less pure. This arises from the power of the people being called forth and concentrated by their representatives; and from the undeniable fact, that when freely used against the privileges of the other orders in the state, these are exposed to a great risk of being overpowered. Hence, for their own defence, the sovereign or the patrician body, or in a government like ours both the one and the other, have always endeavoured to obtain an indirect influence beyond their peculiar privileges, by gaining some hold over the popular representatives in order to avoid the consequences of a collision, which might ensue in case they were driven to use their direct influence over the course of the government. The efforts of which I am now speaking are those made to bias the choice of the electors and occasion the nomination of persons who, being connected with themselves, are sure to favour their interests and views rather than those of their constituents. For there is another source of influence much less direct than this, which is perfectly legitimate and founded in the nature of things. To exemplify the distinction between these two kinds of influence, it may be observed, that the possession in this country of close or nomination boroughs by the government, or by the peers, before the year 1832, gave the sovereign and the aristocracy a direct sway over the assembly in which the constitution required that only the representatives of the people should sit, and only the people should rule; while the wealth, rank, talents, and virtues of the patrician body (the Natural Aristocracy) gave that body, and the respect for the crown gave the sovereign, an indirect influence, besides, which the change of 1832 has not been able to affect.

There are various ways in which the two other estates may directly obtain weight and even control in the popular body. They may interfere in elections by the use of corrupt means to bribe or to intimidate the electors; and they may exert their influence without any corruption, by using their authority, their natural weight with the people, in favour of certain persons devoted to them and to their body. They may also use their influence with the representatives themselves after their election. It is not impossible, though not very common, for several peers to have their agents in our House of Commons: I hardly remember a parliament in which there were

not some few instances of this connexion. The sovereign must, also, have many members in his service, unless, as in France, the ministers are excluded from votes ; but even there they are suffered to have seats and to speak in both the Chambers. When the sovereign, as has frequently happened both here and in France, is obliged to take into his councils a ministry of whose persons or principles he disapproves, he has generally had a trusty band of "king's friends"—men for the most part attached to his service, by holding military or household places, and who act neither as representatives of the people who elect them, nor as supporters of the actual government, but on behalf of the royal person and authority. It is, however, incomparably more difficult now to influence the representatives in the English parliament than it formerly was ; and therefore the attempts of the other two orders, or estates, must be chiefly made to influence the elections. Nor are these attempts as easy as they formerly were, because the conduct of the representatives is now more under the control of the constituents.

This interference of the crown and of the aristocracy is quite contrary to the genius of the representative system, and is a violation of any mixed constitution into which that system enters as a component part. It is all the worse for not being reciprocal. The people have no means of influencing the proceedings either of the aristocracy or of the sovereign, other than through the choice of representatives whose powers are conferred on them by the constitution. If ever the people endeavour to use their peculiar power, the force of numbers, to overawe the deliberations of the aristocratic assembly, or the councils of the sovereign, there is an illegal act done for which punishment ought to be exacted. If the monarch or the patricians exert their influence to corrupt or intimidate the constituents, or to seduce the representatives from their duty to their constituents, there is an illegal and a punishable act also committed. There is even an irregular, unconstitutional, and reprehensible act done, though it may not be punishable unless as a breach of the privileges of the popular body, if any of the other two estates interferes in any other manner, any manner not strictly speaking illegal, to influence the choice of the representative, or his conduct when chosen. The true theory of the mixed government is, that each of the orders or estates should remain separate from the other, and each possess, independent of the other, its own peculiar powers and privileges.

But there is nothing reprehensible or contrary to the spirit of the system in the other orders gaining influence over the representative body, either indirectly through the electors or directly with the deputies, by means of the Natural Aristocracy and of the reverence for the sovereign. This must ever give those estates a very great weight in that body ; and to this must be added, the regard for the stability of the mixed constitution, and, consequently, for the continuance and security of the other orders, as well as their own, which largely influences the people and their deputies. They regard the patricians and the sovereign not as enemies to be attacked, or as adversaries to be struggled against, but as partners in the same concern, with whose co-operation the good of the whole community is to be sought and worked out.

However, the great security and influence of the patrician and royal estates, and their best protection against the third estate, should the exercise of its power be apprehended as overwhelming, is to be found in the legal rights, and privileges, and prerogatives of these other estates. It is of the essence of a mixed government that each estate should have powers independent of all the others, and in the exercise of which it is unaccountable and supreme. But if each estate is not also possessed of some effectual strength, some actual force, wherewith to vindicate its authority when assailed, or enforce its rights when disputed, the government is only in name mixed, and the impotent estate being reduced to a cypher is as if it had no existence. Now there are two kinds of protection for the authority of the estates which possess less strength, less physical force, than the popular body. The one is the reluctance of that body, and especially of its representatives, to bring on a crisis dangerous to the existence of the government, the desire which all the estates must have in common to avoid extremities, in order to consult the general interest. Of this we have already treated fully in examining the doctrine of checks and balances, as well as in other portions of this work (Part II. Chapters II., XI., XIII., XVII.).

The other protection is that which must only be resorted to in cases of extreme necessity, but the means of resorting to which must always be possessed, and the possibility of the resort never be lost sight of—the exertion of physical force. Nor must this be reckoned a desperate chance. The Sovereign has, of course, always the power of protecting his prerogative in such extremities,

by using the force which the constitution entrusts to him, calling upon the civil functionaries to abide by him, and appealing to the military power for his defence. The Aristocracy are far more helpless ; but even they are by no means without defence. They form a small body themselves with their families ; but they are a body of the greatest courage and fortitude, making an important nucleus or central point round which all may rally who hate injustice and would resist oppression, as well the oppression and injustice of the many as of one—of the people as of the prince. The retainers of the Patrician body must always be very numerous, and they are in general exceedingly attached to their patrons. A large, and well-armed, and high-spirited force could always be raised by this class in their defence were matters urged to a crisis by the encroachments and usurpations of the people. Besides, in a mixed government where there are three estates, the Sovereign would infallibly take part with the privileged orders. It must further be observed that a very considerable portion of the people themselves would prefer this, the side of law and justice, to joining in the excesses of popular usurpation. All men of property must be averse to such a revolution as could only be brought about by the overpowering force of the multitude possessed of no property all ; and it is manifest that the proprietors of all classes form a very numerous body in every civilised community. Take in England only the owners of stock ; there are ascertained to be above half a million of these, and they must almost all be averse to popular revolution. They and their connexions would make a very numerous body to rally round the existing order of things, in the event of any attempt to overthrow it by lawless force.

It is needless to repeat that the case here put is an extreme one : the insurrection of the people, by themselves or their representatives, against the established constitution—their attempting by the power of their numbers to overthrow the lawful and undoubted privileges of the other orders in the state. The case is one of a revolutionary kind ; the act is, like that of resistance on the part of the subject, only to be justified by the necessity which leaves no alternative. The right of resistance is the foundation, and it is of necessity the foundation, of all popular, all mixed government. The encroachments of the Sovereign upon the rights of the subject, his ruling in defiance of the law, and trampling upon the liberties which the constitution secures to the people, is

a full justification of resistance to his authority. The encroachments of the People upon the rights of the Sovereign, their seeking to destroy his lawful authority, and trample upon the prerogative recognised by the constitution for the good of all, is a full justification of his using force in defence of his authority. As the People cannot resist by the forms of the law, because the Sovereign is supposed to set it at defiance, so he cannot constrain the People by these forms when their proceedings are altogether lawless. As it is not every encroachment of the Sovereign that will justify resistance, but, on the contrary, the evils of the struggle are always to be set against the advantage of restraining the wrong-doer—so it is not every Popular encroachment that will make it lawful for the Sovereign to use the force with which he is entrusted in order to put down lawless proceedings. The evils must in both cases have become intolerable before the resistance is to be attempted, and the probability of success is to be weighed in order that a hopeless attempt may not involve the community in distress and confusion. Above all, in either case, the parties whose rights are invaded must first exhaust every peaceful, and orderly, and lawful means of obtaining redress, and must never think of arms until laws have failed to protect them.

The most important application of this principle, as the most beneficial use of resistance, is its tendency to prevent one power in the state from encroaching and usurping upon the others. When the monarch is aware that his infraction of the laws, and his use against the constitution of the force which is committed to him for its support, will be the resistance of the people in its defence, he is deterred from harbouring unlawful wishes, or from embodying them in treasonable designs. When the people are aware that their force, if used to subvert the established government, would be divided against itself, and that they would encounter a vigorous opposition from the other orders, they are not likely to follow leaders who would betray them to their ruin.

But it may be said that the view here taken of the right of resistance when the people are resolved to change the form of their government is contrary to the undoubted maxims that all government is for the people's good, and that the people have a right to change it if they please. To this the answer is at hand. The people have that right; but it is of a revolutionary nature, and assumes society to be resolved into its elements. As long as

a certain form of government is established, the presumption is that the good of the whole, and especially of the people, is best consulted by its maintenance, and requires it to be supported. The different orders in the state can have no other rule to guide them. All must act as if their duty to the community bound each to maintain its own rights and privileges. All must assume that the existing order of things is right; and until overpowering necessity compels their submission, all must resist encroachment and change.

CHAPTER XIII.

EXERCISE OF POPULAR POWER.

Mode of the people exercising power does not affect the Democratic form—Delegation of Executive Functions—Of Judicial Functions—Limits of the proposition—Judicial Usurpations; Israel; Carthage; Sardinia—Judicial Functions at Rome; Athens—Mode of exercising Popular Power—Necessity of preventing rashness and violence—Evils of numerous assemblies—Mob proceedings—Three Checks on rash decisions—These do not lessen Popular Power—Delay; Notices; Stages—Discussion by several bodies—Long period of delegation—Objectionable checks—Initiative—Fixed majority—Prohibition of Repeal—Examples—Penalties on Innovation—Athenian Checks of the right kind—Of the wrong kind—American Checks of both kinds—Three checks always existing without positive law—Orders of proceeding; Experience of business; Contention of different classes.

THE manner in which the people may exercise their power is not material to the existence of a Democracy, provided that power, undivided, is either retained in their own hands, or only parted with to persons of their own choice, and for so short a time as to keep the delegates accountable and answerable to their constituents. We have seen that a representative body being appointed to exercise the trust does not render the government the less Democratic.

1. So neither does the delegation of executive functions to one or more persons, or to a council, render the government the less Democratic. In fact some delegation of this sort is matter of necessity, because no popular assembly ever can perform all the executive functions of any government. The Athenian assemblies approached as near this inconvenient state of things as it is possible to conceive, because particular measures, as well as the appointment of commanders and other office-bearers, were discussed and decided in those meetings. Yet even at Athens there were magistrates entrusted with executive functions. So in the mixed or aristocratic Commonwealth of Rome there were various branches of administration conducted by the senate and the comitia, such as the adoption of particular measures, and the nomination of particular office-bearers, civil and military. Yet

there were many magistrates in whom individually resided the power of executing the laws.

2. *Secondly*, the administration of justice in a Democracy may be wholly parted with by the people to magistrates; and, provided these are of their choice, the Democratic principle is not infringed upon, even if, as is most essential to the due administration of justice, the judicial office should, to secure its perfect independence, be conferred for life. But here we must, of course, be understood as speaking of modern times, when a portion of the judicial duties is left in the hands of the people, by the institution of juries, or of those ancient states in which occasional judges partaking of the administration of justice with the permanent and official judges, all the qualities of a jury belonged to this mixed tribunal as far as regards the Democratic principle. If, indeed, there were neither the ancient nor the modern jurors in those tribunals, and that judges were appointed for life, unless an appeal should be given in all matters, as well of fact as of law, to the popular body or the legislature, it is evident that a power would be created in the state wholly incompatible with Democratic government—a power of the most effective kind, and which would in a very short time subvert the constitution. Indeed we find judges to have been in early times among the persons who, by usurpation, were enabled, from possessing the great powers of the judicial office, and clothing themselves with the respect naturally its property, to obtain sovereign authority and rule as monarchs over the people who originally had chosen them. It was so in Israel for many ages; and although some dispute prevails as to the duration of the power of the judges—one holding it to have been two hundred and ninety-nine years, another, from St. Paul's authority, four hundred and fifty—and although there is some uncertainty as to their appointment, it cannot be doubted that their original functions were judicial, and that their sovereign authority, held for life, though without inheritance, was usurped from the influence thus acquired.—The *Suffetes* at Carthage, in all probability, derived their authority from a similar usurpation; for the name is certainly Tyrian, like the colony which founded that famous commonwealth; and it must be the same with the Hebrew *Shophet*, judge, the *s* being used by the Latins, who had no such sound as *sh* in their language.—Again, we have seen that in the twelfth and thirteenth centuries the island of Sardinia was

governed by four sovereigns, originally judges, who had usurped regal authority (Part I. Chap. XIX., S. 2). In the ancient republics many of the judicial functions were exercised by the popular assemblies. We have seen how this policy in Athens gave jurisdiction to the largest bodies of the people (Part II. Chap. XVII.); and even at Rome, though the judicial system was far less imperfect, the legislative and judicial functions never were kept sufficiently distinct (Part II. Chap. XII.).

3. But it is not only in the delegation of powers sometimes better exercised, sometimes only possible to be exercised by individuals or by very small bodies, that the authority of the people in a Democracy may be directed, and to a certain degree restrained in its exercise without impairing the Democratic principle or making the government mixed. The legislative power itself may be exercised under various restraints, and in a manner effectually to impose laws upon the sovereign people, without any real alteration of the Democracy. This subject is of great importance, and the right understanding of it precludes a variety of errors which have been committed by the enemies of popular government. It therefore requires an attentive consideration.

As we have repeatedly observed, the possessors of the supreme power in any constitution do not really restrain that power or alter the nature of that constitution by adopting a peculiar mode of exercising the permanent authority. Thus the sovereign in an absolute monarchy retains the undivided and uncontrolled power, although he may please to exercise it through councils, provided these are appointed by him, have no authority beyond that which he entrusts to them, and are at his pleasure displaced (Part I. Chap. II.). The monarchy may even, as we have seen, be made the more pure and absolute by such arrangements of its functions. So the people in a Democracy may exercise their legislative power under such limitations as not only shall avoid any introduction of a mixed government, any risk of destroying the Democratic character of the constitution, but may render that character more stable, and keep it equally pure as if each act of state were done by the assembled people. Care must only be taken to introduce no permanent authority independent of the people, no power restraining the legislative authority, and placed beyond the popular control.

It is of the greatest possible importance that the proceedings of

the people in making the laws which are to govern them, and deciding in the last resort upon the important questions which arise regarding the administration of their affairs, should be conducted in such a manner as to prevent the errors and miscarriages which arise from haste and inadvertence, from ignorance, and from the influence of heated passions. If a single deliberation, and the resolution formed upon it, were to decide every important matter, any assembly, but more especially any numerous assembly, thus conducting the affairs of a community would inevitably work its ruin in a very short time. This must happen as long as men are fallible, and have not the gift of perfect circumspection and fore-knowledge. Their only security lies in supplying that want by slowness of decision, by repeated consideration, by giving every opportunity to objectors, and taking all the chances which delay affords for further lights and more mature reflexion. So it is with any council, however composed; but a numerous body is sure to be composed of more ignorant and incapable than well informed and wise individuals. A single, sudden resolution will therefore be the determination of the less capable and worst informed; the influence of the better class requiring time in order to produce its effects. With time that class generally will be found to prevail, especially in a body whom we are supposing to have no sinister views, but to be deciding upon its own most important interests. But there is another reason why this slowness to decide must ever be more essential in the case of a popular body, and the more essential in proportion as the body is numerous. The passions are easily excited in large assemblages of the people. A sudden alarm produces a universal panic, which sets all reason at defiance; a false statement, if the charge be calculated to arouse indignation against either a man or a measure, is too readily believed, man's nature being unfortunately not prone to require stronger proof the worse the accusation is, but to let their abhorrence of the supposed matter open their ears to the tale; sanguine hopes may be built on foundations as shadowy as those on which fears are raised; the emotions of pity may be excited by a pathetic representation in favour of the worst of criminals; the feelings of affection may be roused on behalf of the most despicable impostors; in short there is no delusion into which a multitude may not be led by the efforts of eloquence, or the yet greater powers of falsehood. Hence the errors of a mob, and its violence,

its headstrong impatience, its deafness to reason, its proneness to cruelty, are proverbial in all countries and in every stage of society. It is certain that the more men are educated, and the greater experience in self-government they have gained, the less they are exposed to such risk of errors and of crimes ; yet there is something in the nature of great assemblies that forbids us ever to expect they should be otherwise than liable to the misleading influence of strong emotions. It is even possible that some physical circumstances may enter into this question. We know that certain maladies are contagious from the mere sight of persons stricken with them. Fits are known to have this effect on those who witness them. Hysterical affections are contagious in a public meeting. Epilepsy itself was so common in the Roman assemblies that it was termed the *morbus comitialis*. The presence of great numbers produces a contagious sympathy. Men, from merely knowing that others are affected, become irritable, nervous, unable to control their feelings. The same individuals have different sentiments, come to different resolutions, possess themselves in more firmness and calmness, in a smaller meeting.

All these considerations dictate the absolute necessity of important questions being either discussed and decided by a smaller body of the people ; or *secondly*, at different times, allowing a due interval for reflexion ; or *thirdly*, by different bodies ; or *lastly*, with all these precautions together. We have seen how important a security against the mischiefs of popular assemblies is afforded by the representative principle. But this is not sufficient ; for the assembly of the representatives themselves is, though in a much less degree, subject to the same risks of misdecision from ignorance, deception, passion. Therefore the supreme power, even when entrusted to representatives, must, for the safety of the people, and for the same reasons which require the delegation, be exercised in a certain fixed manner and under certain material restraints, voluntarily imposed, and which may be varied at any time, if found inconsistent with freedom and with popular rights.

The three principal checks upon rash and erroneous decisions are therefore these—delay interposed between any proposition and its final adoption ; the requirement that it be submitted to more than one body of popular representatives ; and the independence of the bodies entrusted by the people, within reasonable limits consistent with their being responsible.

By adopting such courses the people can in no sense be said to part with the whole, or even with any portion, of their supreme power. No man who in the paroxysm of a brain-fever submits to restraint deems his personal liberty infringed. No man who makes a point of submitting his financial affairs to a skilful accountant, or his legal proceedings to a learned adviser, supposes that he parts with the management of his concerns. No man who makes it a rule never to give away a living or other place in his gift, without allowing a certain period after its becoming vacant to elapse, thinks he restrains his power of appointment. He who from distrust of his judgment or his feelings on each individual case lays down a general rule, from which he will not swerve, only feels himself the more safe, without being the less free. Nay, if he even ties himself up by a trust-deed, he only carries the measure necessary for his own protection into more complete effect, without sacrificing his liberty or his rights. So the people are as supreme, in every rational sense of the word, in a constitution which requires a certain delay before any resolution can be taken, or a double discussion, and the assent of two bodies, before it can be made binding, as they would were no such salutary course of proceeding chalked out and defined by the fundamental laws of the Democracy. It is only requisite that both the bodies should owe their origin to the popular choice, hold their commission from the people, and be liable in a period of two or three years to be re-elected or displaced by the people.

1. The allowing time for deliberation, the first of the precautions stated above, is so plain and simple a matter as to require no further elucidation. It may be accomplished by requiring notices, or by referring in the first instance to committees of inquiry, and only proceeding on their report, or, which is the only effectual course, by requiring repeated stages through which the resolution should pass before it can be made final.

2. The examination by two or more bodies, say by one after the other has fully discussed and adopted any measure, may either be a mere addition to the delay, or it may be a new security of a different kind, according as the two bodies are similar in their constitution, or differ from one another. If the same electors choose both from the same classes of eligible persons, and for the same period of time, then it is plain that the only effect of the double discussion is an increased delay and so many

more stages of discussion, as if these had been required to be gone through by the body in which the measure originated. But if either the electors of the two bodies are different, or the persons eligible are different, or the periods for which they are elected are different, the double examination will afford an additional security against error; because the two bodies will in the two former cases represent different classes, and in the third case they will act with different views and feelings, being more or less dependent on the constituents, that is on the people at large, according as their tenure of place is shorter or longer. This difference in the structure of the two bodies will of necessity give rise to a different consideration of the same subject, will occasion a much more full scrutiny of each measure, and will more effectually prevent rashness, and violence, and error.

3. In like manner, the giving a very short period to the trust delegated by the people must always have the effect of making the representatives mere agents in the hands of their constituents. All the mistakes and passions of the people will be reflected in their deputies. Every popular clamour and all the prejudices of the ignorant or fickle multitude will sway the representative body, and the main purpose of representation will be defeated. Yearly elections are therefore sure to produce the worst effects; unless indeed their inconvenience and the indifference likely to arise from a constant repetition of the same proceeding, gives rise to a continuing of the representatives once chosen, and the making elections a mere form, as they become in many corporate and other bodies which adopt this plan, the office-bearers in which when once chosen, are found really to hold their places for life, notwithstanding a yearly election. Three years may be deemed the term on every account most desirable as a protection at once to the representatives for their independence, and to the people for their power.

Beside the methods which have now been considered, others may be resorted to in order to regulate, and as it were temper, the exercise of the popular will; but these are in themselves very objectionable; the true regulators, the proper balance-wheels, are those which have been described.

1. Among these objectionable methods may first be mentioned the giving to one power only in the state the right to propose, or originate measures, what is called the *initiative*. If the less po-

pular body alone has this privilege many violent proceedings may be prevented, and the excitement of the people by what passes among their representatives may be avoided. In no other respect is this contrivance different from giving to the same body a negative upon the more popular assembly's resolutions.

2. Another contrivance of a still more objectionable kind is the requiring a certain proportion of voices in the representative body to carry any measure of superior importance, as two-thirds or three-fourths, instead of a bare majority. This clumsy device is liable to the manifest objection among others that it must frequently prevent measures being adopted which the public good requires. It also tends to form a party within the bosom of the governing body, and to give a minority undue weight and influence.

3. Nearly akin to this, but still worse, is the expedient of declaring certain laws unalterable, or unalterable till after a certain period has elapsed. Nothing can justify so great an absurdity, but the supposition that the circumstances of the state cannot change in the course of the time prescribed for the duration of the laws, and also the supposition, if possible more groundless, that the makers of them were endowed with perfect wisdom and foresight. The people who so far mistrust themselves as to tie up their own hands, expose themselves to the hazard of any change that may happen, and at the same time prevent themselves from profiting by the lessons of experience.

The most signal instance of such an error in modern times was that of the United States in their federal constitution, and the result was neither more nor less than the Americans being obliged to continue the African slave trade for years after its enormous criminality had been universally confessed, and its danger to the country that carried it on had become daily more imminent.

4. The exposing persons who rashly propound innovations to peculiar risks by punishing them if they fail, is another, and if possible a more objectionable expedient adopted with the same view. Of this it may safely be pronounced that it never can prevent the mischief apprehended, and may often prove injurious to the state as well as oppressive to individuals. When the popular clamour is favourable to the proposed change, it is safe to bring it forward, and this is the very occasion on which the check

is required. When the fickleness of the multitude leaves the proposer in peril, he is sacrificed because he trusted them, and they betrayed him. When a measure may be wholesome though unpopular, fear of incurring the penalty will prevent it from being brought forward, at the very time that the public good may most require it.

All such devices as we have now been considering are devised by political artists nearly as clumsy as the mechanician would be who, instead of appointing a balance-wheel to his watch, should by some rude contrivance interrupt the expansion of the main-spring itself, or stop the movement by which the chain unrolled itself on the fusee.

Of all the expedients, both well and ill-advised, which we have described, the history of Democratic governments affords various examples, clearly showing that the necessity of some regulation to the movement of the popular will and power has been felt, and by experience felt, to be absolutely necessary wherever this form of polity has been adopted.

The Athenian constitution, the most purely Democratic of any ever established, interposed frequent delays in the process for altering any old law, or introducing any new one, by requiring various steps to be taken, and requiring also the successive discussion by several bodies differently constituted. The proposition was referred to a select body of the Senate, called *Nomothetes*, fifty in number; the *Prytanes*, to whom these made their report, published it to the city; it was then exercised by other *Nomothetes*, 500 in number, differently chosen from the former; next the *Senate* at large discussed it; afterwards five persons, *Syndics*, were selected for the purpose of defending the old, and of course opposing the new law; and last of all, and after the measure had undergone all these five stages of scrutiny, it was debated and decided upon in the general assembly of the people. Next, no law inconsistent with an old one could be proposed without directly repealing the old one; an admirable rule for any legislature. Again, laws affecting individuals specially, like our bills of pains and penalties, the most tyrannical of popular proceedings, required the presence of 6000 at least in the assembly. Then, many important questions were referred to bodies other than the popular body, and by them finally disposed of. The *Heliæa*, though chosen by lot, were not a tenth part so numerous as the

Ecclesia or general assembly ; and the *Areopagus* were a selected body chiefly of persons who had held high office, and could pass the scrutiny of the censors, or *Euthyni* ; also, they held their places for life. Beside all these restraints of the proper kind there were others of the description which we have seen to be objectionable. Whoever proposed a new law was liable to be impeached by what was termed the *γραφη παρανομων*, the proceeding for unconstitutional legislation ; and he might be so prosecuted within a year from his proposition having been made, and even when it had been agreed to, in case the law was found detrimental upon trial.—There were many laws which contained a prohibition against all attempts to change them on any account. Finally, there was the gross injustice of the *Ostracism*, contrived to keep down popular men and frustrate ambitious schemes, but which also had a direct operation in disinclining all from “meddling with those which are given to change.” *

The constitution of the United States abounds in checks, some of the proper kind, others of the imperfect kind ; and the former are contrived mainly upon the principles of the British legislation. Every bill must go through the several stages or readings, commitment, and report, in each assembly, exactly as in our Houses of Parliament. Then the House of Representatives is differently composed from the Senate ; the members must be thirty years old in the latter, twenty-five in the former ; the one body holds its commission for two, and the other for six years ; the members of the one are elected by the people at large, those of the other by the concurrent voice of the two bodies composing the State Legislatures. Both houses must concur in adopting any measure ; and the chief magistrate or President, not chosen by these bodies, but by the Union at large, must assent, in order to give their joint resolution force ; but if he refuses, then a majority of two-thirds in each house can ensure its adoption. Again, the power of proposing taxes belongs to one house alone, though the other may amend and alter as well as reject—the gross absurdity of our rule of privilege having been properly rejected by the framers of the American government. The President has the power of pardoning all offences, unless in cases of impeachment. The representatives impeach, and the Senate tries the case. Ambassadors are named, treaties concluded, and judges appointed by the President

* See these checks and balances described in Part ii. Ch. xvii.

and two-thirds of the Senate jointly. All judges are irremovable. Lastly, no part of the constitution can be changed without the consent of two-thirds of both houses, a reference to the individual States in the Union, and the approval of three-fourths of their number.

The American government is not deemed to be the less a pure Democracy because of all these checks upon the popular power : but if we look to the still more Democratic government of the French Republic we shall find similar contrivances to regulate the popular will. The constitution of 1793, the most Democratic of all, gave the choice of deputies to the Primary Assemblies, and vested in Electoral bodies, chosen by these assemblies, the power of naming to the legislature the candidates for executive offices, and appointing the criminal judges, whose office was annual. No new law could be proposed but by the report of a committee, nor discussed without a fortnight's notice being given. It must then, if adopted by the legislature, be printed and sent to the parishes of all the eighty-three departments, when, after a delay of forty days, if one-tenth of the voters in the primary assemblies of the majority of the departments (namely one-tenth of the voters in each of forty-two departments) objected, the law was thrown out, though it had been approved by all the legislative body ; if less than this number objected, the law so approved was passed. The Constitution of 1795 was less purely democratic ; and it had not more checks upon the popular power. The two Councils of Ancients and Five Hundred were not chosen directly, but by Electoral Colleges, whom the Primary Assemblies chose, but whose members had a property qualification. These colleges appointed the judicial officers as well as the members of the Chambers or Councils. The proposal of laws belonged to the Council of Five Hundred ; the consent of the Ancients, or the Two Hundred and Fifty, being required to pass each law ; and in both chambers the bill must be read three several times. The members of each Council were elected for three years. The executive power was given to five Directors, each of whom held his office five years, and must be forty years of age. But the question of peace or war belonged to the Councils, though all negotiations, as well as all military operations, were entrusted to the Directory ; the assent of the Councils being only required to ratify any treaty concluded.

We may now observe that some material check to the popular will, and some security against rash proceedings, must exist in every constitution of a popular kind from three important circumstances which are necessarily common to all such forms of government, or which naturally grow out of a Democracy, and are, as it were, antecedent to, and independent of, any positive institution, any such artificial contrivances as we have been considering.

In the *first* place, every popular assembly must of necessity, and in order to continue its existence as a place of business, adopt certain rules to govern its proceedings. There must be a certain notice given of its meetings; its members must conform to a certain course necessary for the preservation of order and quiet; its business must be arranged in a certain method; care must be taken to prevent surprise by requiring notice of the things to be propounded; and, above all, the chance of a few deciding for the whole must be excluded by requiring that no proceeding should be had unless a certain number of the body be present.

In the *second* place, the experience which all popular bodies must acquire in the conduct of affairs, under whatever regulations, by the mere frequency of their meeting, forms a very important circumstance in the action of every democracy. If in every operation experience is important and use leads to expertness, in the conduct of public business, practice is peculiarly calculated to produce this result. We need not go back to the habits of the Athenian people for an illustration of this proposition, or call to mind the nicety of taste even in judging the highest exertions of the rhetorical art, which the habits of attending their assemblies had given to the Attic multitude. The comparison of public meetings in the metropolis and the provinces,* or the contrast of the attempts at such proceedings made in France with the meetings in this country, may suffice. However, the infinite superiority which all regularly constituted bodies, meeting at

* An illustration of the nature of mob government may be taken from the heedless statements of fact, and crude, ill-considered assertions of opinion in which the periodical press so largely deals. Compare the facts and opinions in a daily paper, with those in a monthly or a quarterly publication, and observe the wide difference between the rashness of the one and the more respectable caution of the other. Again, compare the more cautious statements of the London newspapers with the extravagant absurdities which so often fill those of the provinces, less experienced than their brethren of the capital, and you need go no further in order to understand how expertness is gained, from habit and use, by even the multitude for whom those papers cater.

stated times and by rule, must ever have in managing their business, over the best occasional meeting of persons seldom, if ever, brought together, even in a country where such meetings are customary, at a glance strikes the observer, and shows how widely those unreflecting persons err who derive all their impressions of a Democratic government from their observation of the conduct held by multitudes or mobs.

In the *third* place—and this is perhaps of all others the most important check and regulation, because it grows naturally out of the popular frame itself, like as the governor in a steam-engine derives its power from the movement of the machine—if all the members of the community have a voice, should the people act by themselves, but still more if all interests and classes are represented in the case of the people acting by delegation, there must needs arise in the great majority of instances a difference of opinion which of necessity leads to full discussion. Even a small minority, where free scope is given to debate, will suffice to prevent sudden resolves being formed and ill considered measures being adopted. A few opposing members are sure to gain time. The delay gives them an opportunity of making the reasons against the proposed course be heard and weighed. By the supposition, the people, or their representatives, have only the public good at heart, for it is their own good that they are consulting; and, though they may be ill advised as to it, they cannot have any corrupt bias to neglect, still more to sacrifice it. They must, therefore, be open to conviction, and the sense of the majority will in general not be found resolute against the reasons fully urged by an enlightened few. In the greater number of cases this difference of opinion will be likely to secure the state against rashness, violence, and error. In almost all cases it is likely to secure a delay sufficient for obtaining all the information that can be procured, and for bringing forward all the considerations that can be material to a full discussion of each subject.

The particulars which we have now been examining furnish a very satisfactory answer to those in whose minds a democracy has become synonymous with anarchy or mob-government. When this idea strikes men they picture to themselves what they have witnessed or have heard of as passing at public meetings, where calm deliberation is not to be expected, because it is in truth by no means the thing for which these assemblies are con-

vened. Excitement, mutual inflammation, adoption of propositions previously resolved upon, giving vent to strong sentiments that oppress the mind and demand relief by utterance, the play of the feelings, not the exercise of the understanding; in a word, action, not deliberation, are the objects of the meeting; and accordingly in most cases no one who differs from the multitude ever thinks of attending; all who come have, generally speaking, made up their minds; or where any division of opinion exists, the whole proceeding becomes a scene of fruitless noise, or possibly of dangerous confusion. This is anything rather than a picture of the popular proceedings even in the worst regulated Democracy. They who prefer that form of government praise a regular and feasible system of popular dominion, not the irregular, and uncontrolled, and disorderly proceedings of a lawless multitude. What they mean by a Democracy is such a system as we have been examining, in which, although the people be the mainspring of the machine, their force is both exerted according to certain laws, and combined with other movements which still further direct its action, although it is always the essential characteristic of the system that all these balancing and regulating movements are themselves dependent upon the great mainspring itself, the people's power.

It is true, as we shall afterwards find, that these checks and balances, for this very reason, can never be so effectual in a pure Democracy as in a Mixed government; but we have no right on that account to undervalue them, or to deny their operation, even in the purest Democracy that can be formed.

CHAPTER XIV.

VIRTUES OF THE DEMOCRATIC POLITY.

Rulers have no sinister interest—Personal ambition has no scope—Illustrations; Lewis XIV.; Charles XII.; French Republic and Empire; Washington—Progress of improvement—Purity of public men; its two causes—No incapable and wicked Rulers—Benefits of popular Discussion—Cheap Government—Comparison with Monarchy and Aristocracy—Public Defence—Purity of Manners.

WE are now to examine the qualities of the purely Democratic system, that is, the system which, without any monarchical or aristocratic admixture, vests the supreme power in the people.

1. The fundamental peculiarity by which this is distinguished from other forms of government is, that the people having the administration of their own concerns in their own hands, the great cause of misgovernment, the selfish interest of rulers, is wanting, and if the good of the community is sacrificed, it must be owing to incapacity, passion, or ignorance, and not to deliberate evil design. The sovereign in a monarchy pursues his personal interest, and that of his family; the public good is thus sacrificed, and mischiefs arise to the state when its interests clash with those of the prince. The privileged body in an aristocracy seek after the individual interests of their order, or its individual members, still more injuriously to the community, because they are a more numerous body of favoured persons than the sovereign with his family and his courtiers. But no such detriment can arise to the public good under a purely popular government. At least the chances are exceedingly small, and the mischief can only arise from some party, or some individuals, obtaining so much favour with the people at large as to mislead them for their own ends; a thing of necessarily rare occurrence, because there will always be a conflict of parties in a free state, and the people are prone to jealousy and suspicion of all powerful men.

2. It is, perhaps, only another and more limited form of the same proposition, that one great cause of pernicious wars, and of injurious negotiations, is wanting also in a Democracy. The personal ambition of an individual, his feelings of slighted dignity, his sense of personal honour, as well as his desire of aggrandisement, both to gratify his pride or love of glory, and to augment his influence, by extending his powers of obtaining support at home, can have no place under this scheme of polity. There may be ambitious leaders, whose desire would be to plunge their country into war; but the people will naturally be jealous of them, and at all events, will be disposed to prevent any one aggrandising himself so as to endanger their liberties. No such unutterable atrocity could ever have been perpetrated in a Democracy as the war in which Louis XIV.'s courtiers plunged their country, and the ravaging of the Palatinate, to distract the pampered tyrant's mind from interfering with their measures at home. No party could have hurried republican Sweden into the ruinous contests by which a sceptered madman exhausted her resources, and annihilated the influence and the name which her valour had gained under his wiser ancestor. To the ambition of the Carnots and the Dantons of the French Republic bounds were set by the popular government, which had ceased long before a single man's desire of universal empire desolated the country by his conscription, and subjected it twice to a foreign yoke. Had the virtuous Washington himself become enamoured of military glory, and desired to extend the dominion of republican institutions over Canada or New Spain, the same people who had begun even to show dissatisfaction with those who, against his will, proposed his third election, and who had refused their commanders leave to perpetuate the renown of their arms by founding an order of merit, would have speedily taught him that war is a game the people are too wise to let their rulers play.

3. The course of legislation in the commonwealth must always keep pace with the improvement of the age. The people, whether acting themselves or through their delegates, and whether these delegates merely follow the instructions of their constituents, or deliberate and decide for themselves, must always communicate to the laws that are made the impression of their own opinions. If the lights and wisdom of their representatives, or of the

leading men among them, exceed, as it must, those of the people at large, their legislation never can fall short of the prevailing civility and refinement. No sinister interests can interfere to check the progress of improvement in the legislature. No prejudices of one class, no selfish views can have any weight. The alarms of a sovereign and his court at the advances made in this direction, the fears of a privileged order at the progress made in that, never can stop any measures useful to the frame of society. The advancement may be too rapid, for want of the checks and regulations which an aristocratic body supplies, as we before showed (Part II., Chap. VI.). Rash experiments may occasionally be tried; crude ideas may find their place in the acts of the legislature; but the progress of social improvement, the intellectual advances of the age, will be reflected in the laws which the Democratic councils adopt.

4. The administration of public affairs in a Democracy is more certainly pure than in any other form of government. This arises, *first*, from the publicity which must always be given to every proceeding; and, *secondly*, from the entire responsibility of every public functionary to the people or their representatives. Peculation or abuse of any kind becomes hardly possible in men so jealously watched, and sure to be so severely punished if detected. In proportion as any mixed government approaches to the Democratic model, the same purity in its administration becomes more certain. But in no mixed government can the administration ever be so pure as in a Democracy; because wherever there are either privileged orders, or princes and courtiers, there are parties possessed of certain powers and privileges, who have an interest, real or imagined, in the selfish proceedings of themselves or their adherents, that will not bear close scrutiny, and who are enabled to protect in many instances those who are guilty of abuse. In a democracy no such powers or privileges exist.

5. No risk is run in a Democracy, as in a monarchy, of incapable or of wicked men holding the supreme direction of affairs, either in the legislature or in an executive department. The greatest of the evils which beset a monarchy have therefore no place here. No infant in the cradle, no driveling idiot, no furious maniac, no corrupt or vicious profligate, can ever govern the state and bring all authority into hatred or contempt. The

practice of government only renders the men chosen by the people more able to rule, and more worthy of their trust, while the possession of power makes the sovereign, generally speaking, more unfit to use it by the tendency of all power to corrupt its holder. The ablest and the best men may always be expected to have authority in a free state. The prince's favourites, and the patrician's connexions, are sure to be preferred in a monarchy and an aristocracy.

6. The ordinary administration of affairs, as well as the course of legislation, benefits by the interposition of the popular voice. All measures are fully discussed, and the chances of great errors or oversights being committed upon any given occasion, are exceedingly diminished. Popular delusion may prevail now and then ; and a rash or heedless course may happen in consequence to be pursued. War has often been a favourite with the people, and when they have become alarmed at defeat, or weary of the expense and the suffering of the contest, they have prematurely wished for peace. Yet it cannot be doubted, that as the pursuit of their interest is the main object of all administration, their judgment, likely in the long run to coincide with that interest, is in proportion likely to be sound. It is not the necessary characteristic of a Democratic government, as we have seen (Chap. XIII.), that it should be in the hands of the people at once deliberating, deciding, and acting. Give them time for reflexion and inquiry ; give the wiser and the better informed among them due weight in the public councils ; and the probability is, that safe and enlightened policy will be preferred.

It must, however, be observed, that this virtue a Democracy only possesses in contrast with an absolute monarchy. The ignorance, or caprice, or imbecility of a single ruler may, and often must, as has already been seen (Part I. Chaps. v., x.), produce disastrous effects. In an aristocracy it is far otherwise ; and there seems little, if any, reason for assigning a superiority of administrative excellence to the Democratic over the aristocratic polity. (Part II. Chap. VI.).

7. The great cheapness of the Democratic government is justly to be numbered among its virtues. The support of a monarchy requires of necessity a large expenditure. The sovereign must be surrounded with a costly magnificence. His person and his family must be amply provided with whatever can contribute

not only to perfect comfort, but to luxurious indulgence, to splendid representation. His court must, at a heavy charge, be provided with office-bearers, of no use to the community except as contributing to the monarch's dignity. An increase in the number of these is even required for the mere purpose of maintaining his influence in the state. An army, considerably larger than the preservation of the public peace or the external defence of the country requires, must be maintained to secure the sovereign from all possibility of attack in any domestic event that may happen. Even the representation of the state with foreign powers demands a more expensive establishment than the simple republicans find necessary. All these things exist in an aristocracy, though to a smaller extent; but here, as well as in a monarchy, the habits of the court, and of the refined society in which the ruling class moves, makes the salaries necessary for public functionaries much larger, and greatly increases the number of those functionaries. In a Democracy, the only thing considered is the work to be done; no more officers are employed than that requires; no more is paid for their labour than is an adequate remuneration for it. Even the responsibility imposed upon the public functionary is not compensated by salary; for that, the honour of serving the state is deemed an adequate remuneration. Not only are no useless functionaries employed, but the preservation of the public peace and the support of the government may be secured by an efficient police, and no troops are required but for the public defence; the same constables that seize common offenders protect the persons of all the magistrates.

Thus with a Democracy, even the most popular mixed government will bear no comparison in the article of cheapness. Indeed the court, and its consequential expenses, may fall even heavier on the public purse in a mixed than in a pure monarchy. An aristocracy, like that of Venice, may govern the community with a very moderate expenditure. If Monarchy forms a part of the constitution, its expenses become the heavier from the necessity of maintaining its influence against the conflicting powers of the other orders. Its military establishment may not be larger, if so large; but its civil expenditure is very likely to be more lavish than even a despotism would require. Monarchy in England cannot be supposed to cost so little as from a million

and a half to two millions by the year. But we reckon this large sum well bestowed.

8. The resources of a Democracy for public defence are naturally greater than those of any other form of government. The vigour of the most absolute despotism can only act through the fears of men; and an Aristocracy has neither that lever wherewith to move the mass of the people, nor the same patriotic spirit which animates the subjects of a popular government, though it has far more power of this kind than absolute monarchy can possess. But when of the whole people each one feels an individual interest in the protection of the national independence, they will flock to the standard with other hearts than beat in the bosoms of slaves, who care little to avert a conquest that can only change the persons of their tyrants. Among the resources which the democratic spirit tends directly to call forth, are of course to be reckoned not merely the men, but the money which it places at the disposal of the government. The incredible exertions which free states have made in their defence, when assailed by forces apparently overwhelming, are familiar to every reader; they fill the brightest page in the history of all times. The numbers of men whom small states have raised on such emergencies appear almost beyond belief; as indeed does the gallantry with which they have encountered the far greater force opposed to them. For examples of this democratic spirit we need not travel back to Athens, and Sparta, and Rome; to the days of Marathon, Thermopylæ, Aquæ Sextiæ;* modern history records the devoted valour of the Switzers perishing for liberty; and the Hollanders, ready to banish themselves from Europe, if in Europe they could no longer live free. Nay, our own days have witnessed in wonder the Americans baffling the skill, and repulsing the force of the best troops in the world; and who can have forgotten the marvellous efforts of the infant republic of France, when her whole people rose in arms against their invaders? But the same people, when sunk into the subjects of an absolute monarch, of whose wars they were weary, no longer answered the calls of their chiefs to arm against the enemy, and twice suffered that enemy to march through an unresisting country to the capital itself.

9. The greater purity in a Democracy is not by any means

* Aix, where Marius with a handful of men defeated 300,000.

confined to public conduct ; a general sobriety and self-command, with the necessity of conforming to the public opinion ever in favour of morals, is an universal characteristic of republican manners. The luxurious indulgence, inseparable from a court, engenders unavoidably a certain corruption, and the vices attendant upon indulgence are never frowned down by courtiers, nor discouraged by courtly example. An Aristocracy is to the full as liable to this observation as a Monarchy. It is indeed rather in so far as the members of a sovereign's court partake of aristocratic habits than as the attendants of a monarchy, that they are subject to such censure. But the republican nature is essentially severe ; the virtues of temperance, honesty, public spirit, self-denial, which are exotics in a court, are the common growth of the Democratic soil. No party chief, no popular idol, can ever so far or so long obtain pre-eminence as to inculcate the habits of subserviency, and of fawning, and of falsehood, which too often grow up under the influence of royal or of patrician authority. They who have allowed no other praise to the rulers of the French Democracy in its most exaggerated form have confessed that its cruel aspect was softened by the patriotic feelings, and entitled to command respect by the majesty of republican virtue. The Decemvirs, who for above a year ruled the destinies of France, and disposed of millions without rendering any account, died as poor as the meanest officer who carried into execution the commands of their absolute power. Carnot retired without retaining anything whatever in his possession. Robespierre and St. Just, when put to death, had not above five pounds in the world left of the monthly pittance doled out to each member of the Committee of Public Safety.

Such are the virtues of the Democratic system. Let no one undervalue them ; for they are the greatest which any scheme of polity can possess. They all conduce directly and greatly to the happiness of the people ; all increase their comforts, maintain their liberties, preserve their tranquillity, improve their virtue. Nor are they to be left out of the reckoning when we proceed to examine the other side of the account, and to view the many considerable vices naturally inherent in this form of polity.

CHAPTER XV.

VICES OF THE DEMOCRATIC POLITY.

Power in irresponsible hands—In hands free from all risk—Irresponsibility of popular Chiefs—Popular Tyranny intolerable—Suspicion and Terror—Flattery of the People—Illustrations; France; England; America—Prevention of free Discussion—Disproportioned attention to different Questions—Power of the periodical Press—Of Party—Impunity to popular Outrages—Alleged want of Secrecy and Vigour.

IN treating of the vices incident to Democracy, it must always be kept in mind that we are speaking of its natural tendency, and not affirming the existence of these defects in every instance, or to their full extent. The precautions taken to counteract them in all cases may have produced some effect; in some cases, may have produced a great effect. No government of this class has ever been established without some of those precautions having been taken; and accordingly there never was any example of a Democratic Commonwealth in which the evils towards which purely popular government tends existed in their full extent. Our present inquiry, therefore, is confined to the natural tendency of that species of government.

1. The first and the worst effect of popular government is, that the supreme power is placed in irresponsible hands. The people exercise their office whether of directly governing the country, as in petty commonwealths, or of choosing delegates to perform this function, accountable to no earthly tribunal. Each individual, too, forms so inconsiderable a part of the body which decides in any instance, that he feels little or no responsibility to rest upon him even as regards his own conscience. As for public opinion, from the nature of the thing it exists not, the people themselves being those whose sentiments are meant when public opinion is spoken of. In this respect there is a wide

difference between Democracy and all other forms of government. A sovereign, however absolute, in any civilised country, feels the weight of public censure, and is sensible of public approval. However little freedom of speech there may be under any despotism, the tyrant knows that men think and feel; he is aware that his cruelty and caprices rouse their indignation, that his infirmities awaken their scorn. So the members of an aristocracy, though far less exposed to the same censure, and though numerous enough to support one another under the weight of popular hatred and contempt, nevertheless, as we have seen (Part II. Chap. XXII., *sub fine*) cannot withdraw themselves altogether from the jurisdiction of the popular tribunal, as long as the natural aristocracy has influence, and as long as men live in society. But this check of public opinion cannot influence the people themselves directly. They can only dread having their conduct exposed, and made hateful or despicable in their own eyes, at a moment of calm reflection. This resembles rather the feeble check which conscience imposes upon a tyrant or a patrician oligarchy, than the restraining force of public opinion. It would be exactly the same in its operation, or rather its impotency, with that shadowy restraint of conscience, were it not that men are prone to distrust and suspect each other, and that the people on any occasion of violence or perfidy, of ingratitude or fickleness, will naturally enough look forward to the risk that some of their own body may reprobate or despise the proceeding in contemplation; and may thus be induced to take timely warning, so that they may avoid future exposure to one another.

But it is not only that the holders of supreme power in a democracy are placed beyond the reach of censure; they are likewise secure from all personal risk. Unless they be split into parties, so that one faction may to-morrow exact vengeance for what another has done to-day, the people as a body never can be punished. Their excesses may prove in the result detrimental to themselves, but for any act of cruelty, ingratitude, treachery, fickleness, they can never be visited with vengeance by the victims of their wrong. The tyrant most fenced about with guards, and exercising the most despotic sway, is always, in proportion to his supremacy, subject to fear—his appointed punishment. Many an act is thus prevented, and many a pain

is thus endured. Even the patrician body, though far less exposed to such risks (Part II. Chap. VI.), is not beyond their possibility; and, accordingly, aristocratic councils, still more those of an oligarchy, are materially influenced by dread of enraging the people. The Venetian government took especial care always to keep the popular feeling on its side, and so we have seen did the Swiss aristocracies (Part II. Chap. XXII., XXVIII.). There was no greater error committed by the aristocracy of ancient Rome than the neglect of the people's feelings, and nothing tended more to produce the civil wars and bloody contests which preyed upon, and at last subverted, that Republic (Part II. Chap. XIII.).

2. The irresponsibility enjoyed of necessity by the people themselves is, to a certain degree at least, communicated to the popular leader. When a party chief is well supported, and possesses great influence over a large body of adherents, he becomes irresponsible in proportion to his following. He cares nothing for the opinion of his adversaries, because they are sure to assail him, and their judgment is considered biassed and worthless. He is secure of the approval of his own side, and he looks not beyond it. For him, therefore, there exists no such tribunal as the public, and no public opinion can have any influence in controlling his proceedings. It is, if possible, worse in the case of there being no division of parties, and all, or nearly all, the people inclining one way. The popular chief in such a case is armed with the power of a tyrant, without feeling any of the tyrant's dread either of the public indignation expressed by way of censure, or of the same indignation breaking out in acts of violence.

It must, however, be observed that this rigour of a popular chief, unless sustained by wise councils and virtuous actions, never can be of long duration. In proportion as the people is ignorant on all subjects, but especially on state affairs and those questions which concern themselves, this influence may be prolonged a little more or less, but in no case can it ever happen that the follies or the wickedness of such leaders should not work the ruin of their power, even over an ignorant community. For the people's own interests being at stake, they will become jealous and suspicious; events will open their eyes; by the event men are prone to judge, and especially when ignorant of

principles; and even the failure of a prudent and right policy may unjustly occasion the downfall of the popular favourite. While his power continues, however, his tyranny is less tolerable than that of any despot; it leaves no escape to its victim, and no redress or consolation under oppression.

3. The same is to be remarked of all popular tyranny, whether spread over the people at large or concentrated, as it generally is, in the hands of certain powerful leaders; there is no escape from it, no redress against it, no solace under it. There is some help and relief to the sufferer who is oppressed by a tyrant or an oligarchy; he has the sympathy of the people. This is withheld from him who is the people's victim; his sufferings are exacerbated by the howl of popular execration or scorn. This has always been felt as a severe aggravation of the wrongs which popular iniquities or caprices inflict; and it is the harder to bear, that it falls heaviest upon the most delicate and sensitive natures. They whom a tyrant destroys at least know that they have earned his hatred; the people's victims may perish because of their services to the power that destroys them. The cruelty of the Parisian multitude, during the sad period of the reign of terror, was raised to a pitch altogether unendurable by their savage exultation in the destruction of those patriots and sages who had devoted the best energies of their lives to the service of the people, and the establishment of their liberties. It adds a bitter pang to those sufferings rankling in the hearts of high-spirited men, that their reputation, their fair fame with after ages, is exposed to be tarnished by the same tyrant of many heads, under whose displeasure they have unjustly fallen, possibly condemned for their virtues. The illustrious patriot, whom a despot has doomed to die, may lay down his head on the scaffold in the confident hope that history will avenge his wrongs, and embalm his memory for the veneration of the good in all ages. But if Sidney or Russell had fallen by the voice of a misguided people, they never could have felt sure that the dispensers of punishment might not also prove the dispensers of fame, and sully the reputation of those whom they had destroyed.

4. The same popular tyranny subjects men in a pure democracy to constraint, and mutual suspicion, and terror, exactly like an absolute despotism, with this difference, that it is more easy

to escape the agents of the royal tyrant, than those of the vulgar scourge, the people everywhere scattered abroad. When the predominance of one party in a Democracy has once been fully established, there is no safety for those who differ with it by ever so slight a shade. The majority being overwhelming, all opposition is stifled. No man dares breathe a whisper against the prevailing sentiments ; for the popular violence will bear no contradiction. Hence the suppression of wholesome advice, the concealment of useful truths. It becomes dangerous to declare any opinion, however sound, which is unpalatable to the multitude. Truth must no more be told to the tyrant of many heads than to him of one ; nay, mere flattery becomes the food generally offered up, and he who goes before others in the extravagance of his doctrines, or the violence of his language, outbids his competitors for popular favour. This vile traffic is alike hurtful to the people and to those who deal in it. The former are pampered and spoilt ; the latter are degraded and debased. For instances we need not go far back into history. The agitators in the French revolution were only safe if they adopted the most violent courses that were propounded. Robespierre succeeded by going beyond all others from the beginning of his public life. Marat went even beyond him, and, had not the revolting nature of his doctrine, recommending wholesale murder in plain terms, led men to pause on his honesty, perhaps on his sanity, he would only have been prevented by his death from outstripping Robespierre himself in popular favour. In this country we all can remember the time when it required extraordinary courage among popular chiefs to say a word against reforming, as it was termed, but destroying, as it meant, the House of Lords ; and the most thoughtless or the most unprincipled of men actually pledged themselves, on a day fixed, to propose such a senseless measure, only because in so doing they pandered more profusely to the approved popular tastes. In the United States, as all travellers are agreed, the tyranny of the multitude exceeds the bounds of all moderate popular influence. No person dares say anything that thwarts the prevailing prejudices, or the popular opinions of the day.

5. The proneness of the people to violent and unreflecting courses, and the fickleness of their resolutions, are to be classed among the vices of a Democracy ; for although checks are, and

of necessity must be, provided against the continual operation of these failings, else the government could not subsist at all, these checks never can be so effectual as wholly to counteract their operation; and accordingly in the best constituted Democracy, the people will occasionally interfere with the functions of their representatives, sometimes with those of the executive government, sometimes even with the administration of justice. The influence of the constituents upon their representatives never can be entirely suspended during the period of the delegated trust. The day of election must always be looked to by the latter, and the deputy's conduct must be more or less influenced by his dread of that ordeal. Hence he will be slow to offend on matters of extreme interest; and each succeeding question is apt for the time, as we have already observed, to be the theme of as extreme anxiety as if there were none other in the political world. If indeed the deputy has good reason to believe that this interest will subside, and that it is not only ephemeral, but unlikely to be awakened when once forgotten, he may follow the dictates of his own judgment. But if the feeling is seated deeply, and likely to be permanent, no representative will venture to resist its current. Who in America, coming from the southern states, will dare propose slave emancipation? Who in France will explain the operation upon agriculture, of equally dividing all lands on the owner's decease? Who in England will show the difficulty of carrying on the government without some nomination boroughs, and the innocence and purity of these compared with the smaller popular places? All these topics may be founded in error; it may be impolitic or unjust to adopt the measures to which their assertion leads; that is not the present question: it is enough for this purpose to affirm, that at least they are highly important, deserving full discussion as experiments never tried, and yet ever since the light of experience has been had whereby to guide us in the inquiry, no one has dared to broach them. And why? Because the people, whose highest interests require their full and deliberate discussion, will not bear them to be so much as mentioned.

6. It is an error and a mischief of a similar kind that subjects receive a very disproportioned degree of consideration in consequence of the course taken by popular taste and feelings. The

question immediately before the public, provided it be of a kind to interest the multitude, is reckoned the only one worth attending to, and the general disposition is to act upon it, as if none other could afterwards arise. Thus a tax would be repealed without regard to the substitute required to replace its produce ; a war would be entered into on grounds of feeling, and without regard to policy ; a peace hastily made when the war proved for the moment unsuccessful ; a favourite rewarded without reference to other claims for which this would lay the ground ; an adversary deprived of his rights without regard to the shock thus given to all property. Not only the present question is overrated, but questions of a personal kind, how trifling soever, always rouse the passions most powerfully, and are suffered to engross all attention, excluding the most important subjects which are of a general or a repulsive nature. No account is here taken of the delusions which ignorance of their real good may bring upon the people ; and of their readiness to take up, from that ignorance, any wild fancies which crafty men may dress up in plausible colours. Better education can alone provide a remedy for this evil ; it is not peculiar to the people ; and, even in their uninformed state, they, like all other classes, may by means of free discussion learn to purge their minds of poisonous errors, and to distrust ignorant or designing advisers.

7. In these modern times, when the press has become so prominent a portion of the people that Mr. Windham called it a "Power in Europe," and others have decorated it with the name of a "Fourth estate in the realm," it is impossible to pass over the fact of periodical writing possessing a far greater influence in a Democracy than under any other form of government. The people at large are easily deceived by confident assertion, mistaking its hardihood for the boldness of sincere conviction. They see things positively asserted in print, in the same print in which so many truths are also recorded, but by very different hands : they do not draw the distinction ; and above all they never inquire from whom all this body of narrative and dogmatism proceeds. No names are given ; and yet this very concealment of the author tends to gain a belief for what he says, because the reader at any rate knows nothing against him. Yet he may be the most worthless, as he is often the most malignant and despicable, of his species ; he may be a

creature so utterly insignificant that no human being would attach the smallest importance to either his story or his opinions ; but, without ever reflecting on this, and without ever waiting to ask who says all these things, the people suffer the grossest falsehoods, the merest fabrications, and the most calumnious imputations to pass current, and if repeated, as they may daily be, to find a place in their belief. Whoever has attended to the contents of the American newspapers, and whoever has read those of the French Republic, will confess that they very far surpass in slander, falsehood, and senseless violence the British press. That is assuredly bad enough, but the American is much worse ; and then, in this country, little effect is produced by it on the course of the government. Of late years its indiscriminate scurrility having increased, and its moderate regard for truth been diminished, its influence has become notoriously exceedingly trifling compared with what it was while more decorously and more ably conducted ; but in the United States all its brutal violence, and all the exposures made of the wretches in whose hands it is, have failed signally to lessen its acceptance with the people, and its influence is very considerable upon the administration of public affairs.*

8. We have, in a former chapter (Part II. Chap. v.), examined at length the effects of party. In a Democracy its sway is fully greater than in any other government ; and in an Aristocracy its worst evils arise from the appeals always made by contending factions to the body of the people whom they endeavour, with too much success, to cajole, to seduce, and to corrupt. Nothing remains to be added in this place.

9. We have in passing adverted to the interference of the people in the government, and even in the administration of justice, above all of criminal justice. Such acts, however, can only be regarded as outrages upon all law, as great crimes committed by the mob rather than the people. Nevertheless, the actors in such enormities may too securely reckon upon protection from a powerful party espousing their cause, and from the slowness of the public officers to do their duty in a country whose institutions make every political functionary, except the

* Of course, both as to America and this country, these remarks must not be understood as of universal application. There are most honourable exceptions in both countries.

press, answerable to the people at a given time ; nay, the judge himself, as far as jurymen adjudicate. It must, I fear, be admitted, that in the United States men escape prosecution, and if prosecuted are saved from conviction in cases of popular violence, which in any government of the old world would, as a matter of course, call forth the most severe visitation of the criminal law. It is quite unnecessary to cite the far more dreadful outrages of mob-violence which stained the French Revolution ; nor would it be fair. Those scenes were enacted rather in a crisis of change, and under a kind of anarchy, than in a country subject to a regular Democratic government.

Among the defects of a Democracy no mention has been made of the want of unity and secrecy in its councils, and of vigour and dispatch in its measures of negotiation, of war, and of police. That this form of government is naturally liable to those charges may be admitted ; but expedients can so easily be resorted to for supplying the natural defect that it can hardly be worth while to enumerate it among the evils of a Democracy. There never has happened any injury to the United States, either from too great publicity being given to its councils or from the want of a vigorous executive in war ; while the history of the French Republic proves unquestionably that the most popular government is not incompatible with the entrusting to individuals as extensive powers, civil and military, as the most extensive and complicated operations, whether of finance, or negotiation, or war, can demand.

CHAPTER XVI.

OF RELIGIOUS ESTABLISHMENTS.

Connexion—Religious Establishments impossible in a Democracy—Peculiarity of Religious differences—Objection that Establishments violate Conscience—That they are made State engines—That they restrain natural Liberty—Benefits—They secure Instruction—Equalise the Burthen—Avoid evils of Election—Check Religious excitement—Prevent Sectarian zeal—Prevent Sectarian political violence.

THE various institutions connected with the happiness of the people will form the subject of consideration under the second of the general heads into which Political Philosophy is divided, the *Functions* of government, as contradistinguished from its *Structure*. These institutions belong, not generally speaking, to one political system rather than another, but may flourish more or less in all, though the genius of some governments is more favourable to many of them than the genius of others; as for example, there is scarcely any likelihood of establishments which presume the existence of public credit, that is the secure possession and free employment of capital, or of institutions for the diffusion of general knowledge, flourishing under a despotic government; nevertheless the existence of such credit and institutions is not absolutely incompatible with despotism itself, and accordingly, though with crippled means, and to a limited extent, they have been known to find a place under even eastern monarchies.

But there is one establishment which appears incompatible with the existence of a Democracy, or at least only compatible under restrictions hardly reconcileable with its healthful growth, and that is a system of religious instruction, endowed and patronized by law, with a preference given to it by the state over all other systems, and a preference given to its teachers over

the teachers of all other forms of belief,—in other words, a Religious Establishment. Where all the people are equal, and no privileged order is recognised, it seems impossible to give a preference by law to the teachers of one class of believers, however numerous these may be compared with all other classes of believers. In matters of a temporal kind, men may differ widely, some approving one doctrine, some another. But were the state to appoint teachers of one of these disputed systems of science, or of morals, or of legislation, and give them an endowment withheld from the teachers of other systems, no material injury would be done to the feelings or the comfort of any class, and the government would be perfectly justified in preferring the teachers of a system tending to support the peculiar policy of the state. It is otherwise with respect to religious instruction. The happiness of men and their most anxious feelings are so deeply interested in their religious tenets, that any preference given by the state to the teaching of religious doctrines which they sincerely believe to be erroneous proves excessively galling to them, and the same persons who could well bear to pay taxes which should go to the propagation of a physical or even of a moral theory deemed by them to be erroneous, would feel seriously aggrieved in paying their contributions towards propagating a religious doctrine which they believed to be false. Not to mention that although a government may have some legitimate interest in the dissemination of moral or political opinions favourable to the policy of the constitution, no government can have any but an unlawful and sinister object in view by seeking the support of any system of religion, or forming a political alliance with its professors.

But there is another reason why no Democratic government can support a National Religion, at least in the modern sense of the term. That in all Christian countries means the endowment of a class set apart from the rest of the community, and forming a peculiar body, a sacred order of men, who hold their functions for life. Even if these men are chosen by the freest election of the people, and removable at the people's pleasure, they are still an order of men whose influence is personal and who are unconnected with the government. This is not consistent with the Democratic scheme. Their being an order of men in choosing whom whole classes of the people are un-

qualified to join, renders their existence still more repugnant to the democratic principle. But it is hardly possible to have an Established Religion, the professors of which are not to hold their situations for life. A greater curse to the peace of a country and the happiness of its society than a priesthood dependent upon the breath of popular favour at every instant, cannot be imagined. Yet the existence of a class endowed by the state, of men possessing great personal weight, and nevertheless unconnected with either the government or with any temporal concerns, and holding their places for life, is wholly repugnant to democracy. The judges being appointed for life is only rendered compatible with purely popular government, by the intermixture of popular influence with their functions, through the appeal to the legislature and through the office of jurors. A clerical order of great influence, paid for life, and subject to no appeal nor to any control, is wholly inconsistent with pure democracy; as much so as an order of knighthood or of nobility.

If it be said that some such plan as is adopted in several of the American Commonwealths would reconcile a state religion with a Democracy, namely, obliging every one to pay his tax to the state, but the state giving it over to the minister of whose sect the contributor is a member, the answer is that this may by some be said to constitute no Religious Establishment, because no preference is given to one faith over another. It is only a mode of raising funds for religious instruction; a mode, too, which the advocates of pure Democracy might object to as compelling every man to choose his sect.

We are thus led to inquire whether this impossibility of having an Established Religion in a Democracy be a virtue or a vice of that system; and this raises the question respecting the virtues and vices of Religious Establishments.

The objections to them are extremely manifest; but three of these it may be enough to state, because they seem to comprise all the others.

In the *first* place, it is a serious grievance to any person that he should be compelled to support a religion which he conscientiously disapproves, and this whatever be the form of the government under which he lives. Men are far more sensitive upon religious differences than upon any other differences, or indeed upon almost any other subject. We in vain try to persuade

them that the points upon which they dissent from their neighbours are extremely insignificant compared with those upon which all are agreed. On the contrary, the less the distance which separates two sects, the greater seems generally to be the force that repels them from one another. In vain we try to remind them how much better it is that the bulk of the people, especially the lower orders, should be taught some religion, and kept in some moral restraint by the discipline of some sacred functionary, than that they should go without any instruction or discipline at all. The answer ever at hand is, that such subjects are too sacred to admit of compromise, and that nothing can justify helping to propagate religious errors. In short, experience proves that this is a subject in which the bulk of men feel, and do not reason.

In the *second* place, although religious instruction be the motive of supporting an establishment, the civil magistrate always contrives to gain from that establishment secular support. This is both hurtful to the constitution by introducing a disturbing force which always acts in favour of one party in the state, and it is hurtful to the interests of religion itself by making its teachers political instead of merely religious men, subjecting their doctrines and their conduct to secular influences. "Every idea (says Dr. Paley) of making the church an engine, or even an ally of the state, converting it into a means of strengthening or of diffusing influence, serves only to debase the institution and to introduce into it numerous corruptions and abuses." *

In the *third* place, the establishment of one religious class tends to the restraint of freedom, both in speech and thought, to intolerant practices, and to obstructing the progress of general improvement. Not only religious discussion is checked, but power and influence is gradually obtained by the predominant sect, and the civil magistrate is induced to extend its influence and to enforce the exclusion of other sects beyond the mere preference given by means of the endowment. The various institutions to the benefit of which members of the Church alone are admitted; the many laws at different times made in all countries to put down dissent; the opposition so often given to useful changes by the privileged body; are all strong illustrations of this proposition.

* Moral and Political Philosophy, Book vi., Chap. x.

It is commonly objected as a further evil of an establishment, that it imposes upon certain classes of the community a burthen from which others are exempt, the dissenter having to support his pastor, while the churchman is provided with religious instruction for nothing; and if, instead of an endowment in land, or tithes, or both, the state church is supported by taxes, then the dissenter pays a double tribute. The only reason for not enumerating this among the objections to an established church is, that to a certain degree it may be supposed applicable to the purely voluntary system; for the dissenters pay if they choose, and the persons who do pay, suppose there is no establishment, pay by so much more than those who do not. Besides, if it be said that the churchmen benefit by the state clergy, so do the dissenters, both by the learning upon theological subjects which is thus encouraged and diffused, and by the good effects of the clergy's teaching upon the common people. The three objections first stated are the real grounds for opposing the establishment by the state of one system exclusively.

It would be vain to deny the weight of these objections to an Establishment; they are undoubtedly of a very serious kind; and daily experience everywhere bears testimony to their importance. Nevertheless, it seems that upon the whole there result greater mischiefs from having no establishment at all, and that the balance is sensibly in favour of such an institution. This arises from the very peculiar nature of the instruction which religious teachers seek to convey.

1. If the people were left to supply themselves with religious knowledge, and the moral instruction which always accompanies the communication of it, there can be no doubt that they would very often remain without it; at least the classes which most require it would be the least apt to obtain it. For the very want of it implies an ignorance of its value and uses; and hence they who were without it, and to whom it is therefore the most needful, would be for that very reason the last to seek it. This has been so much felt in countries which by the nature of their government could have no state church, that they have fallen upon the expedient already mentioned, of requiring each person to pay a church rate or tax, towards some one minister whom each might choose for himself, a mode for providing for religious

instruction which is liable to manifest objections. But unless some such contrivance be resorted to, this obvious injustice will always be done. They who are sensible and public spirited will pay for those that are not. Whoever chooses to save his money will be able to benefit by the churches which his more liberal neighbour supports. Even if he be not allowed to attend the service in these, he will profit by the improvement in the conduct of those who do ; and this injustice and inequality is exactly one of the evils objected in another view to an establishment.—The compelling men to pay for the support of opinions which they do not hold, is another and the main objection ; yet, as it is very possible that a person may agree with no one sect in the community, the case of such person falls within the scope of the objection.

2. If the people are to provide for the support of their own pastors, so must they select them also. The objection is quite as great to requiring men's profiting or endeavouring to profit by the ministrations of a state minister, as to requiring their support of a creed they disapprove. Then the office of religious instructor must be elective. Who can doubt the evils to which this must give rise—evils, above all, to religion itself? If any one quality is requisite in a pastor it is his authority with the flock ; the teacher must therefore be independent of the hearer. If he holds his place from the congregation, his doctrine must be suited to its palate ; he must preach, not the word of God but of man. He must submit to the caprices of the multitude and study popular arts. His character must be degraded far below the debasement of the political demagogue ; inasmuch as he has sacrificed much higher things, stooped from a far greater height to reach the necessary pitch of degradation. He who has accommodated his sacred functions to the caprice of the multitude has done an impious act and forfeited all claims upon the respect of rational men by losing his own. Even if the original choice is to be the people's only interference with their pastor, still the process is both unseemly and debasing. The arts of a popular candidate ought never to have a place in the habits of holy men ; the pulpit of all places is no place for canvassing. Besides, if the people are split into parties respecting the choice of a minister, as they of course will be when that choice is left free, how are the defeated minority to profit by the ministrations

of the man whose unfitness they have been proclaiming, and even been violent in proclaiming? The result must be, that on every election a secession of the defeated party to hear their own favourite will take place, and thus each congregation will be indefinitely split. However, we are making a groundless, a gratuitous assumption, when we suppose that the people's interference can be confined to the day of election; for a free and voluntary system and the absence of all Establishment presupposes that the pastors are to be provided with funds to support them by the voluntary contributions of their flocks. An endowment or a compulsory provision, leaving the choice in the people, is one form of a Religious Establishment; it is, in fact, the form in which the Scottish national Church was established for several years after the Revolution of 1688. When we speak of the people in any community being without a state church, we mean that they shall not only elect but maintain their religious teachers; and, accordingly, one of the arguments often put forward by those who object to Establishments is their tendency to make the minister careless and indolent in discharging his duties. It is, indeed, the reason mainly relied upon, next to that of the violence done to conscience; and even this may also be urged against the kind of establishment now under discussion; for a pastor chosen for life, and for life endowed, may change his doctrine, may become heterodox as well as indifferent, and then men are compulsorily providing funds for preaching error.

3. It is, perhaps, only giving another form of the same objection, if we observe how very little the people are to be trusted with a discretion upon religious subjects. If their excitement upon political questions is perilous and requires the regulating checks which we have so often discussed (Chap. XIII.), far more is their excitement to be dreaded in matters that appeal directly to the much more powerful feelings connected with religion—matters upon which the bulk of men, in all ages and countries, have been found to feel only and not to reason. The history of the species is full of examples fearfully proving the force of religious impressions in disturbing the judgment and even perverting the whole heart of man, rendering him capable of the most savage, as well as the most absurd actions. It is needless to dwell longer on a topic which at once shows the expediency of an Established

Church, the only effectual means of checking and tempering these overpowering feelings. All the arguments in favour of checks and balances apply to this with redoubled force.

4. The indolence imputed to the Ministers of a State Church may certainly be carried too far; but it is, perhaps, less hurtful, even when thus found in excess, than the extreme activity of the popular sectary. Whoever has well considered the effect of sect striving against sect, of each pulpit being made the place of attack upon its neighbouring chair, of rival expounders seeking to render themselves more precious in the eyes of their hearers by outdoing one another in the rigour of their outward penances, and the extravagance of their awful denunciations; of an active competition even in the vehemence and the mystery of their spiritual dogmas; will confess that quietism is the safer extreme, if into one extreme or the other the religious instructor must run. It is better, as has been said, that a little indolence and quietism should be purchased by a state provision, than that the people should be exposed to all the mischiefs of excessive and fanatical activity, of the zeal which burns with far more heat than light. *Mallem illorum negligentiam, quam istorum pravam diligentiam.* An indolent priesthood, too, is seldom a persecuting one; it is a better because a more peaceable neighbour than an over-zealous volunteer system. Yet there is also a preventive of too great indolence; the activity of sectaries, where toleration is established, will always prevent the state endowment from engendering too great indifference among its ministers.

5. Among the objections to an Establishment we found a very important one in the political uses to which it is capable of being turned, its ready subserviency to the views of the Civil Magistrate. But a great mistake would be committed by any one who should suppose that no secular interference can belong to the most entirely voluntary system of religious instruction. The nature of sectarian priests is to the full as busy as that of an established clergy, and it is more restless, self-confident, and intolerant. For examples of this we need not go back to the seventeenth century. Our own times afford instances in abundance, to prove how easily the sectarian pastor unites with his sacred calling the secular functions of the political agitator.

This is not confined to Ireland; we have experience in this country of its operation; and if any proof were wanting, how very easy it is for zealous men to pretend, or perhaps really to feel, a call towards secular politics as a part of their spiritual vocation, let it be remembered, that both in Scotland and in England the purely temporal question of the Corn laws has in our own day been taken up by a large number of the dissenting ministers of both countries, upon the alleged ground that it is a religious question, a ground, however, disclaimed by all rational statesmen, how strongly soever attached to the opinion which these zealots supported. There is, in truth, no one question which such persons may not represent as falling within the scope of their sacred ministry; and if the whole community were under their guidance in spiritual matters, its civil administration, if it fell not into their hands, would at least be materially affected by their influence.

It is certainly, if not a positive benefit resulting from an established church, a very great set-off against the inconvenience of its political subserviency, that it enables the government to be administered without any serious obstruction arising from the operation of public feelings excited by spiritual guides. The influence of the state over the pastors of the people may be sometimes abused to civil purposes; but the nature of religious zeal cannot permit us to doubt that this is a far less mischief than the existence of an all powerful and wholly independent clergy in any community.

It thus appears that among the evils of a pure Democracy is to be reckoned the necessary want of an Establishment for religious instruction, and the mischief that arises in a secular view from the unrestrained acting and fierce zeal of rival sects working upon the minds of the people. Their influence, of course, will be much more universal and powerful in a community which admits of no privileged orders, no distinction of ranks; a community in which all public functionaries, including jurors themselves, are under the perpetual superintendence and control of popular opinion and popular feelings.

In the deductions which we have stated on this important

subject, as in every other part of our inquiries, we have made no allowance for the ultimate effects of Education. In no respect are these more fit to be considered than in their connexion with Religion and with Ecclesiastical polity. But this forms a separate subject, and as yet we have been throughout considering the state of society as we at present find it.

CHAPTER XVII.

PROVINCIAL AND COLONIAL ESTABLISHMENTS.

Popular ignorance and inattention on Provincial affairs—Jealousy—Illustrations from America; from Canada—No natural Incapacity in Democracy—Roman History origin of the opinion—Roman Policy—Carthaginian Policy—Grecian Policy—Dutch Policy—Conduct of Spain—General inference.

It is a very ordinary subject of complaint against Democratic Commonwealths that they always maltreat their provinces and their colonies. There may be some ground for this charge; because there is certainly a great disposition in the people of any country to regard exclusively the interests and feelings of the community to which they belong, and it always will be difficult to fix the attention of any nation upon the concerns of its remote possessions. The knowledge of detail, indeed, which the due understanding of such subjects requires, can hardly ever be obtained by the people at large in any country. The affairs of their home government, and domestic economy, are pretty generally understood, at least in their outline: the affairs of distant settlements, in circumstances so unlike anything that they are acquainted with at home, can hardly be comprehended at all.

But it is not merely from ignorance or inattention that the people are likely to misgovern their remote provinces. The feeling of jealousy, or alienation, or whatever it is that gives the people of every country a prejudice against foreigners, enters largely into the sentiments with which the provincial inhabitants are regarded. They are considered, too, as a subordinate class, as not only a foreign, but also a subject nation. Their interests are supposed to be wholly subservient to those of the parent state. Their resistance to its commands is resented as something rebellious and unnatural. No account is taken of the balance

of debt and credit between the two parties, in regard of benefits conferred and received reciprocally. All is assumed to have been bestowed by the Parent State at her expense, and nothing gained by her at the expense of the Province.

It is, lastly, to be borne in mind, that while the people at home are themselves the rulers, or rule by delegates of their own choice, the inhabitants of the distant provinces have no direct share in the government; they are not represented by men of their choosing; if they are permitted to manage their domestic concerns, it is all that they can expect; even that power is constantly curbed and interfered with where the interests of the people at home may seem to require it; and the weakness of the Colony or Province exposes it to be at all times oppressed, should the disposition of the governing people prompt such a course.

It is better to avoid, if possible, all invidious allusions on this somewhat delicate subject. But the truth of history, both more and less recent, requires us to reflect upon the conduct of the people in this country towards our American fellow subjects. The American war was extremely popular in Great Britain for some years, and only ceased to be the favourite of the nation when its disastrous effects had increased our burthens, doubled our public debt, and lowered the reputation both of our Councils and of our Arms. The Colonists were reprobated as rebels who had dared to revolt and set at defiance the power of the country which founded their settlements. The great advantages for so many ages derived by England, almost all at the expense of the Colonies, were wholly forgotten; and they who had in reality paid so dearly for all our gains were treated as guilty of black ingratitude, only because they refused to let those who had been so long profiting by their mercantile oppression reduce them to the still more abject slavery of political subjection. Yet all who most sensibly felt for the glory of England held fast by this gross delusion. Even the staunchest friends of freedom at home would suffer no exportation of that precious article; and Lord Chatham himself lived and died in the equal reprobation of Colonial independence and of Ministerial incapacity, in conducting the war to extinguish it.—So of late years, the Canadians having claimed to enjoy a more entire control over the moneys raised from them to support the public ex-

penses, and having in one small district committed unjustifiable outrages, the whole constitution of the Province, as secured by Statute, was suspended, and Dictators appointed to govern them with absolute power. Yet this was done without a murmur from any part of the people in England, or Scotland, or Ireland, some of whom would have risen in rebellion, and others loudly threatened to rise, had the constitution been suspended at home in any one Borough-town that sent representatives to Parliament. This silence, too, was preserved unbroken, nay, the rigorous measures against the Canadians were fully approved, by the very parties both in Parliament and in the Country, who affect upon every occasion the most tender regard for popular rights, and are always the foremost in demanding an extension of the people's privileges and power.

It must however, in justice towards the Democratic polity, be admitted, that there seems no fundamental incapacity of a purely popular government to administer its provincial affairs justly, and prudently, any more than to conduct its Foreign affairs, its negotiations, and its wars. Ignorance of their real interests, and culpable neglect of justice, may mislead the people in a Democracy as they may mislead the rulers under any other constitution. Such impolicy and injustice may be fitly reprehended, and it is a wise and virtuous Statesman's duty to expose and to resist it. But there seems nothing in the form of a popular government which is incompatible with politic and equitable administration of its Provincial affairs.

The Roman History has probably on this question misled most inquirers; certainly, it is upon this that Mr. Hume has grounded his proposition, which he reckons among those undoubted principles of political science, that free States are always the most oppressive to their provinces.* It is impossible to deny that the barbarous people of Rome treated their foreign subjects with grievous injustice and harshness. We have seen it fully, both in the second part of this work and in the seventh chapter of this part. But we must bear in mind the peculiarities of the Roman State and its Colonies. A single city, with a very small surrounding territory, resolved to conquer, first, all Italy, and then the world. Its whole policy was formed upon

* *Essays*, iii.

this scheme of universal aggression. Each acquisition was treated as a foreign conquest; and the Colonies of Roman citizens, successively planted in those conquered territories, were placed there for the purpose of keeping the inhabitants in subjection; they were advanced posts of the central army at Rome; they were military stations, to be maintained and governed as detachments of the public force quartered in an enemy's country. The natives were treated with various measure of harshness, but always as conquered tribes. The colonists were more kindly treated, but always as men under strict military discipline, and who were sent on a service of their employers or commanders, and not for their own ease and interest. Accordingly, all the proceedings, both in those colonies and in the provinces at large, were of a military nature. They were regarded, the provinces as recruiting grounds for the Roman army, the colonies, as stations representing the city, and aiding the provincial magistrates sent from Rome to rule the vanquished people. The quæstor yearly reported the means of aiding the state by their returns of wealth and of men able to bear arms. The maritime territories contributed by their seamen to equip the navy; their inhabitants always served in the Roman fleets. But it was really the Patrician and not the Democratic oppression that the remote parts of the Empire felt most grievous. Accordingly, when the Commonwealth was overthrown, we are told by Tacitus that the Provinces felt not at all averse to the change, holding in natural dislike the Senatorial and Aristocratic domination; and he states, with his accustomed precision and conciseness, in what manner this yoke had chiefly galled them. "*Certamina potentum, avaritia magistratûm, invalido legum auxilio, quæ vi, ambitû, postremo pecuniâ turbabantur.*"* Accordingly, Cicero tells us that the repeal of the laws to prevent proconsular oppression would have been the greatest mitigation of it, as in that case those magistrates would only have plundered for their own gratification, instead of also extorting enough to obtain impunity by corruption at home. It is plain that all these vexations belong to the Aristocracy of Rome, the most profligate and unprincipled ever known. There is nothing in the facts affecting the Democratic regimen.

* Ann., Lib. i. cap. 2.

The Carthaginian History is, as we have had frequent occasion to remark and to lament, far more meagre than that of any other ancient state, although it would have been the most interesting of all ancient annals next to those of Rome and Athens. It appears that the army was chiefly composed of mercenary troops raised from all the countries bordering on the Mediterranean; and the celebrated description which Livy gives of Hannibal's army, in all probability, was applicable to the forces generally which Carthage sent into the field, as well as those with which she overran first Spain and then Italy. The Colonies of Carthage appear to have much more nearly resembled the settlements of modern times. For although they were so far planted like those of Rome in conquered countries, and were not, like those of Greece and of modern Europe, established in order to carry off the surplus population from the mother country, yet the only benefit which Carthage derived from them beside the strengthening of her hold over the conquered nations was the trade, which she appears to have kept exclusively to herself. Polybius* has preserved two very curious Treaties made with Rome; one of them as early as the beginning of the Republic immediately after the expulsion of the Tarquins, and which allows the Romans, whose commerce was then in its infancy, to trade with the Carthaginian settlements in Sicily and on the African coast. The other Treaty was made at a somewhat later period, when the spirit of commercial jealousy had been awakened, and it prohibits the Romans from entering the ports either of the African, or Sicilian, or Sardinian Colonies of Carthage, unless driven thither by stress of weather, and expressly forbids them to "plunder, trade, or settle."

The Greek Colonies were all planted, both those of the Dorians in Sicily and Italy, and those of the Ionians and Æolians in Asia, with the view of finding an outlet for the surplus people of the Greek cities, surrounded as they were, each of them, by hostile neighbours, and therefore unable to extend their territories. The names, as Dr. Smith has observed, indicate the difference between these and the Roman Settlements; the latter were termed "*coloniæ*"—plantations; the former *αποικιαι*—emigrations; leaving of home. Accordingly, nothing like tyranny appears to have been exercised over them by the

* Lib. iii. cap. 22.

Metropolis, the parent city or state. The colonists governed themselves as they pleased; they were expected to feel kindly and respectfully towards the mother country, and not to enter into any hostile proceedings against her; and she in return, when she could, gave them succour and protection. Thucydides has preserved a kind of debate between the Corinthians and their Colonists of Corcyra, in which the former complain that the latter alone, of all other Colonists, have taken engagements with their enemies. They affirm, as a thing universally known, that their kindness towards all their other Colonies had uniformly obtained from them the return of affection and respect, which Corcyra alone had withheld.*

The Dutch Republicans are supposed to have governed their valuable Colonies worse than any other nation in modern times. Certainly they have fallen into political errors and worse crimes, not easily to be understood in so sensible, so reflecting, and so worthy a people. The powers given, at the beginning of the seventeenth century, to their East India Company, greatly exceeded any that were ever granted by other countries to trading Corporations of this description. They had the absolute right, not only of administration but of conquest, of negotiation, of making war and peace, of conducting military operations, of exclusive trade, and of legislation in all its branches. The different great towns in the United Provinces named each so many of the Sixty Directors. The Company kept always on foot a large army and navy, amounting, at the end of the last century, to 80 ships of war of from 30 to 60 guns, and 25,000 men. The misgovernment of the Settlements thus administered, or rather thus abandoned, by the State, became proverbial under this powerful body; and the cruelties exercised, both against their subjects, the native powers, and the Europeans who attempted to interfere with the monopoly, have made the Dutch name odious in the East. The power of making laws was, among other enormities, exerted by the Company in punishing smuggling with death; a somewhat characteristic proceeding in law-givers who were traders and monopolists as well as rulers. In the West Indies, the policy of the Dutch was not quite so bad; but they have the vile distinction of having always been the most cruel of masters in the treatment of their unhappy slaves;

* Lib. i. cap. 35.

and their continental possessions, as a just retribution of their wickedness, have more than once been exposed to imminent hazard of being overrun by the Maroons, the revolted negroes, who have, in consequence of ill-treatment, established themselves, for near a century, in the forests of Surinam.

It is, however, in vain to represent the impolitic and harsh Colonial administration of the Dutch as the result of the Republican constitution. Bad as is that administration, there have been far worse. Portugal never was famous for well treating either her Asiatic or her American subjects; and the cruelties of the Spaniards towards the Indians much exceed anything that has ever been laid to the charge of the Hollanders. The whole Colonial administration of Spain, indeed, has been in all ages the model of impolitic and tyrannical government.

Upon the whole, it seems reasonable to conclude, that there is nothing in the Democratic Polity peculiarly incompatible with the wise and humane management of Colonial affairs, beyond the tendency which great bodies of men have to confine their attention and their cares within the bounds of their own immediate interests, and the disposition which those who represent the people in a government have to consult the views and humour the wishes, rather of those to whom they are accountable, than of those with whom they hold no specific relation.

CHAPTER XVIII.

NATURE AND ORIGIN OF MIXED GOVERNMENT.

Connexion—Checks imperfect in a Democracy—In an Aristocracy—In a Monarchy—All Make-shifts, and Why—Illustrations from Action of two Legislative Bodies—From Measures of English Parliament in 1834—Definition of Mixed Government—Illustrations; Poland; Hungary; Sparta; Carthage; Rome—Modern Mixed Monarchies—Opinion of Tacitus; Cicero—Essential Qualities of Mixed Government—British and French Constitutions—Illustrations—Origin of Mixed Governments—Of the Spartan; Roman; Venetian; Genoese; Dutch; French; Scandinavian; British.

IN examining the checks and regulations provided for tempering the force of popular power in Democratic governments we found that there was a serious defect in the operation of those which owed their origin to the people themselves, because, being under their control, the efficacy of the countervailing principle was unavoidably precarious. In like manner, we found that when the method of securing full discussion of public measures consisted in having two or more bodies which are required to concur before they can be adopted, if these several bodies are of the same kind, owing their origin to the same class of the people, composed of the same description of citizens, and holding their appointments for the same period of time, the security for mature deliberation is much more feeble than if those bodies were differently constructed and appointed. Now in every pure Democracy this defect must needs impede the operation of all checks upon the popular will. So in every pure Aristocracy the checks must be formed out of the Patrician body, and there can be no power to balance that body effectually, although contrivances may give the benefit of delay, and so prevent rash counsels from doing irreparable mischief. So, lastly, in every pure Monarchy, all the balances being under the sovereign's control, no very effectual check can be provided upon rash or upon oppressive proceedings of the monarch.

It thus appears that all pure forms of government are liable

to this serious objection. As long as men are clothed with human infirmities, they in whose hands power is placed will be prone to abuse it; and if the power has some unavoidable restraints and limits, their effort will be to shake off the restraints and pass the limits as much as they can. The people in a pure Democracy will be disposed to carry all before them, yielding to the voice of the greater number, who may often be the most unsafe guides. The Patrician body in a pure Aristocracy will be disposed to domineer over the people, and by degrees to confine their government to a few of their own body. The Sovereign in a Pure Monarchy will be disposed to trample upon the natural rights of the community, and to disregard the interests of the many, in favour of his own or his family's advantage. All the contrivances which are resorted to in each of these governments, in order to mitigate the violence of the ruling power, though very useful, indeed necessary, in order to make the system continue existing and working, are nevertheless very far from sufficient to produce the desired effect of tempering and regulating the action of the system. All of them are makeshifts rather than perfect. All of them have the radical defect of deriving their origin from the supreme governing power which they are designed to curb, or at least to mitigate in its operation, and of depending for their continuance upon the will and pleasure of that power.

This necessary defect in all the balances, and checks, and regulations which can be devised for a pure form of polity, is the true origin of Mixed government. Let us take one instance to illustrate this position practically. The device of requiring two legislative bodies to concur in making any law is efficacious in proportion to the diversity between those bodies. If both proceed from the people whose power and will the double consent is intended to temper or control, this never can be effected completely, however different the constitution of the two may be. But if one body derives its existence from the people, being a portion or a representative of the people, and the other is neither appointed by the people, nor accountable to the people, but formed of a class wholly removed beyond the popular control, a very effectual check will be afforded; and, besides, what is of infinite moment, every measure will be thoroughly discussed before it can be adopted.

A variety of examples may easily be given of the practical benefits which result from such a diversity. I well remember a remarkable one in the year 1834. The popular party, having also the government on its side, was more powerful in the English House of Commons than it ever had been before, or is ever likely again to be, because the Reform recently effected in the representation had given a prodigious majority at the general election to the party of our administration who had effected the great change. As might be expected, this popular majority in Parliament, backed by the people out of doors, were disposed to carry things with a very high hand. Two bills were sent up from the House of Commons to the Lords, both manifestly passed without due deliberation. By one it was provided that a single vote in any future House, however constituted, elected under whatever temporary influence of the Patrician or Monarchical party of the Constitution, or a vote taken by surprise even in a House differently constituted, might have disfranchised any of the great boroughs recently allowed to choose representatives. For only a single House of Commons' vote of Guilty was required on a charge of general corruption, and then the Lords were not very likely to prevent the borough's disfranchisement. As soon as I saw what had been done, I appealed to the leaders of the opposition, then so powerful in our House, and I found the Duke of Wellington, Lord Ellenborough, and others fully prepared to stop with me a bill of such frightful tendency, whatever might be the leaning of their own inclinations. The Duke proposed a plan of a kind most admirably adapted to form a substitute for this most crude and reprehensible scheme; he asked my help in digesting it fully; together we framed amendments on the Bill sent up; or rather we framed a wholly new Bill; we had it fully discussed in a select Committee; we obtained the unanimous assent of the Lords to it after the Committee had in one or two particulars improved it; and we sent it back thus changed to the Commons. No objection was made to our Bill, except that the changes were too great to be adopted as amendments, and the further consideration of the subject was postponed to another session. But had the Commons been humoured in their scheme, had the Lords been only a second division or section of the Commons, a chamber similarly chosen and similarly responsible, no one now doubts that a law would have been passed shaking to its

very foundations the whole representative constitution of the country.

Immediately after appeared another Bill, hastily and without any dissentient voice passed by the Commons, and which was well calculated to show how likely the former measure was to have been used by that body for the purpose of disfranchising far and wide. Bribery had been practised at a Warwick Election, and the Commons passed a Bill for all but disfranchising that Borough ; the adjoining hundreds were to be let in. The case was in the Lords examined as if it had been a cause at *Nisi Prius* ; and I sat, with the aid of the Lord Chief Justice and others, exactly as if I had been trying a question between parties in Westminster Hall. We found that all manner of vague and hearsay evidence had been taken in the Committee of the Commons ; and that the utmost the Counsel for the Bill contended they had proved in our House, where the rules of evidence were known and enforced, was that about 30 out of 1250 voters had taken bribes. The very Peer who had charge of the Bill candidly admitted that it was preposterous to ask for any measure against the Borough upon a case like this. But the Commons had never paused or doubted, led away by mere clamour.

In the course of the same session—indeed in the same month—came a third Bill from the Commons, containing many important improvements upon the law respecting prosecutions ; but containing likewise, from an oversight, an enactment which would have suspended the whole criminal jurisdiction from the first of August next ensuing, rendering illegal the proceedings of all the Sessions in the country. The moment I saw this clause in the Bill I of course struck it out, as was my duty, and the Bill went back to the Commons in an unexceptionable shape. The pride of the popular body was offended, and the Bill was thrown out, merely because it was made possible to pass it without overthrowing the whole criminal jurisdiction in the kingdom. The country thus lost the benefit for a whole year of a very useful act ; but it escaped, and escaped through the House of Lords, a measure the most absurd, and which would have proved the most calamitous that had ever been adopted touching the law of the land.

Now in all these cases, and their number might be multiplied indefinitely, the safety of the country depended entirely upon

the Lords being a perfectly different body from the Commons. Had the two Houses been similarly constructed, and similarly accountable, the only effect of a second discussion would have been a somewhat longer delay in passing the pernicious acts, a delay that would have afforded no kind of security that one chamber would take a different view from the other and correct its gross blunders—any more than a different view had been taken and those blunders corrected in the later stages of the bills while passing through the Lower House.

These facts are of importance in an historical point of view; but they are here introduced as illustrating very clearly the respective tendencies of Pure and of Mixed government. I do not believe that there was a single member of either House of Parliament who, in 1834, had the least conception that had the constitution of both been the same, each being a purely popular body, those Bills would have received any effectual opposition even in the provisions which were most plainly objectionable, and which ensured their unanimous rejection by all parties in the Upper House. I am equally sure that there was not a member of the House of Commons through which all these provisions had passed without any opposition, who would not have bitterly repented having given his consent if they had unfortunately become Laws. But thus the mischief would have been done. The moment, indeed, that the worst of them began to work, Parliament must have been reassembled, and the Standing Orders suspended in order to repeal it. But beside the disgrace and contempt which this would have brought upon legislation, and which would have operated in future to prevent, or at least to delay, the adoption of many a good and wholesome measure, some of these bad provisions would have remained upon the statute book, and might have come into operation at a time when a sudden repeal could not have been effected. Thus the Disfranchisement Bill might not have been got rid of until some of the largest cities in the kingdom had been deprived of representatives, and a new Reform Bill might hereafter have been wanted to readmit them within the pale of the constitution.

The natural limits of Mixed government have unavoidably been treated of incidentally in the examination of the three simple or pure kinds of polity. It is that constitution into which more than one of the principles enter, and in which the supreme

power is lodged in more than one functionary or body, each being entirely independent of the other, and each being both irremovable by, and unaccountable to, any authority whatever.

Thus if there be a Sovereign and a Patrician body, the government being vested in the hands of both, that is, certain functions requiring their joint consent, or some functions of supreme power being performed by one, and some by the other, the monarchy is Mixed. So it would be even if the Sovereign could admit members of the Patrician body, provided they were for life, or if the Patrician body elected the Sovereign, provided he was irremovable. The Polish government, sometimes called a Republic, sometimes an Elective Monarchy, was of this description; it was, properly speaking, a Mixed Aristocracy, and we have treated of it under that head. The Hungarian government, which we treated under the same division of the subject, is a Mixed Aristocracy, in which the Sovereign is not elective, but hereditary.* The ancient republic of Sparta was a Mixed Aristocracy, though not of the same kind, for the Sovereign, or rather the two Sovereigns, at Sparta, were hereditary. Carthage appears, like Rome after the first ages of the Commonwealth, to have had a Mixed Aristocracy of a very different kind, or, more properly speaking, a Mixed Democracy; for there was a Patrician body from whom the Senate was chosen, probably by the people, as Aristotle condemns the system for leaning too much to the popular side. The qualification, however, of wealth as well as birth being required both for the *Suffetes*, or chief magistrates, and the Senate, and the general or popular assembly only being appealed to when those differed among themselves, as the whole legislation, and the most important executive functions also, were entrusted to the Senate's hands in the first instance, their power made the constitution a Mixed Aristocracy.

In modern times, however, the most frequent combination has been that of Monarchy, Aristocracy, and Democracy; a kind of union which the ancients appear to have considered impossible, sometimes treating it as the mere romantic speculation of political dreamers. Thus Tacitus, after saying that all nations are either governed by the people, the patricians, or a sovereign, adds that a kind of constitution, formed

* Part II. Chap. ix.

out of a choice or combination of these, is more easily praised than realized, and if realized, he says, it never can be of long duration.* Cicero gives the clearest opinion in its favour, without pronouncing it to be a chimerical scheme: "I hold," he says, "that government to be the best which is composed of the regal, patrician, and popular powers moderately blended together."† It may, however, be admitted that in ancient times, when there was no means of the people exercising their power, or share of the supreme power, without a direct interference in each act of government, that is to say, before the principle of representation was discovered, the difficulty of maintaining a Mixed Government, in which the people should form a portion, must have been all but insurmountable.

1. The foundation of this, as of every other form of Mixed Government, is the absolute independence of each order in the state. If the sovereign, like the Roman consuls and Carthaginian suffetes, held his high office for a limited period only, and were then displaced at the pleasure either of the patricians or the people; if the select or privileged order held its patrician rank at either the sovereign's or the people's pleasure; if either the sovereign or the patricians could interfere with the popular assembly, influence directly the choice of its members, in the case of a representative system, or influence the deliberations of the popular body, representative or other, which exercised the people's part of the administration,—in neither case would the government be Mixed of the three primary kinds, but in the first case it would be either a Mixed Aristocracy, or a Mixed Democracy; in the second case it would be a Mixed Democratic Monarchy, or a Mixed Monarchical Democracy; in the third case it would be either a Mixed Monarchical Aristocracy, or a Mixed Aristocratic Monarchy.

It would not be affirming too much, or refining too much, to regard the British Constitution, before 1832, as rather partaking more of an Aristocratic Monarchy, than the triple combination for which its admirers claimed credit. Neither is it very easy

* *Cunctas nationes et urbes, populus aut primores aut singuli regunt. Delecta ex his et constituta reipublicæ forma laudari facilius quam evenire; vel si evenit haud diuturna esse potest.*—Ann., lib. iv.

† *Statuo esse optime constitutam rempublicam quæ ex tribus generibus illis, regali, optimo (qu. optimatum ?) et populari, modice confusa.*—De Rep.

to regard the present Constitution of France as having a sufficient aristocratic mixture to deserve that character. The want of influence and wealth in the nobility, and their legislative functions not being hereditary, hardly gives sufficient scope to the aristocratic principle.

2. Not only is it essential to a Mixed Government, that the different estates should be independent of one another, and each be independent of the powers to which the others are accountable; it is another essential requisite that each should be equally required to concur in every legislative act. If any one, or any two where there are three estates, could make laws to bind the whole; if the majority of the estate could bind the minority, instead of all being required to concur in every act of legislation, the government would only be Mixed in name. Thus, if in England the King and Lords could legislate to bind the people, the Commons would only have a nominal power. So if the Lords and Commons could bind the Crown, the Sovereign would be only nominal; and though with us he hardly ever exercises his negative, yet he effectually does the same thing by having the choice of his ministers, the selection of his servants among all those individuals of the people in whom the two Houses will confide, beside having great direct influence over the members of both Houses by his patronage and by his power of creating Peers.

3. The necessity of the several estates being each supreme and independent, and each required to concur in all important proceedings, is confined to acts of the supreme or legislative authority. If the Crown, for example, could interfere in any minor acts of the people or the nobles, as by nominating to certain places connected with popular meetings, the returning officer for instance in elections, or even the presiding officer in the patrician assembly, it would not cease to be, most strictly speaking, a Mixed Monarchy. So, too, the different estates may exercise important functions independent of each other, and so far from the government ceasing to be Mixed, it would be the better as a Mixed Government for the distribution. No one regards the executive functions of the sovereign as any deviation from the Mixed Polity, although neither the nobles nor the people can directly interfere with them. Our monarchy and that of

the French is all the better as a Mixed Monarchy, because neither peers nor deputies can ever interfere with the command of the army, or the appointment of ambassadors or of judges; and because the peers can only exercise judicial authority, and the commons or deputies can only impeach and not try public delinquents.

4. But in all these instances of separate powers being lodged in the several estates or orders, it is the nature of the Mixed polity, and flows directly from the combined operation of the parts, that one should in extreme cases act upon the other, even so as to impose a restraint upon each other in the exercise of their separate and independent functions. Thus, although the sovereign alone can appoint the judges, the ministers, the commanders of the forces, either House may censure a bad appointment; both together may cause the removal of a bad judge; and, one accusing, the other may try and convict a bad minister or commander. In all these cases the strict constitutional law requires that the three estates should concur; because, unless the crown chooses to make the removal of a judge, it does not follow from the joint address of the Houses against him, the statute only empowering, and not requiring, that removal upon such an address. So, though a pardon cannot be (by statute) pleaded in bar of an impeachment by the Commons, the crown must agree not to pardon before the sentence—the joint sentence—of the two Houses can be carried into effect. As for the censure on a minister, or address of one or both Houses to remove him, strictly speaking the crown is not bound by it. But in all such cases the great power possessed by the Houses, especially by the Commons, renders the crown's yielding to their desire a matter of course. Indeed, if only the Commons take their line, and the Lords join with the Sovereign against them, an appeal to the people by a dissolution is the resource of the Constitution, and if this ends in the return of a parliament similarly resolved, the Crown and the Peers, almost always, must submit. However, in all the ordinary cases, this mutual interference of the estates with each other's separate and independent functions is not the course of the constitution. It is a power always existing, but rarely acting; it is there, but is only called into exercise when an occasion arises that requires it,—

an occasion that renders a check or balance necessary to regulate the movements of the whole machine, and prevent the excessive force of any one power from deranging or destroying it. They are like the more ingenious and refined contrivances of mechanical skill, which being only designed to prevent mischief and restore equilibrium, are quiescent until the occasion arises when their action is required, and having discharged their appointed duty, become again inactive when the remedial operation has been performed.

The origin of the simple forms of government we have found always to be lost in obscurity, because those constitutions have been first established in the earliest ages. The Mixed governments have seldom been the earliest under which men lived, and we can therefore more frequently trace their origin. They have sometimes arisen from acts of violence committed by one power in the state encroaching upon all others in a manner not to be borne, and thus rousing a resistance which either entirely changed the political system or introduced into it some checks calculated to prevent a repetition of the wrongs that had been suffered. But the more frequent origin of Mixed government has been the gradual rise of one branch of the community into an importance that did not originally belong to it, and its consequently obtaining a share of the supreme power. As the anxiety to obtain this on the one part before the influence which engendered it was completely established, would make the order rising into importance satisfied with a portion of the supreme power, and as those in possession would generally be disposed to yield a portion of the governing power, rather than risk the loss of the whole, a combined government would thus naturally arise in the State, and continue for a greater or less time to maintain itself, according as the shares of power given to the parties were well or ill adjusted, and the joint action was well or ill adapted to the circumstances of the community. Sometimes attempts would be made by one party to regain the exclusive influence which it had lost; sometimes the other party would seek to extend its power and govern exclusively in its turn. If the machine were ill-adjusted, new changes might take place, with more or less violence, to produce a better adaptation of its different parts to each other's action, and of the whole move-

ment to the situation of the country; and in examples of all these changes, by sudden revolution or by gradual accommodation, or by both acting at different times in the same system, the history of mixed governments in both ancient and modern times abounds.

The Spartan constitution could hardly be called mixed. To the anarchy of the disjointed government under the two kings prior to Lycurgus, succeeded a constitution by him modelled on that of Crete, and which was nearly a pure Aristocracy. It was not till above a century after his decease that the Ephoral power became any protection to the people; and in a very short time the Ephori became altogether identified with the Aristocratic body, so as to eradicate whatever mixture of Democracy had for some years been introduced.*

The Roman government under the kings appears to have been a Mixed Monarchy or Aristocracy, in which the patrician body was gradually overpowered by the king. When, with the aid of the people, it had effected a revolution, expelling the kings, the Aristocracy gained an uncontrolled ascendancy, and became pure. The popular power increasing with the numbers and the wealth of the people, gradually undermined the Aristocracy, and established for some time a Democratic Commonwealth. But the patricians soon regained a portion of their influence, and the government was a Mixed Aristocracy until the tyranny of the patricians, the corruption of the plebeians, and the conflicts of factions after a scene of unparalleled violence and cruelty, prepared the way for a pure and absolute despotism.†

It would be a great abuse of terms to call the Venetian a Mixed Aristocracy, because of the Doge being appointed for life; for he had no real share in the legislative power or the important administrative functions. That singular government continued for six centuries in the form into which it was finally moulded. But at a much earlier period there was a Mixed government established at Venice, in consequence of the ruinous contests carried on by the different islets of which the state was composed,—contests which threatened the entire conquest of the whole by the Slavonians and the Lombards, the

* Part II. Chap. xv.

† Part II. Chaps. xi. xii. xiii.

latter attacking by land, the former by sea. Under the pressure of this exigency an executive officer, the Doge or Duke, was introduced into the system, and with great administrative power and extensive patronage; but as the general or popular assembly retained the legislative power in its hands beside electing the Doge, the government might now be regarded as Mixed. The increased power of the Doge, from foreign conquest, occasioned frequent struggles between that magistrate and the people at whose head the nobles placed themselves. But, generally speaking, the Doge prevailed, because no permanent measure was adopted to restrain his power, although the struggles of the parties frequently led to his violent death. After the lapse of nearly two centuries and a half (1030) a check was at length contrived, and the government became more really mixed than it ever had been, in consequence of a body being created whose concurrence with the chief magistrate was required to legalize his acts. For about a century and a half the government continued to be really of a Mixed form, when the Aristocracy was established, which continued for six centuries without any change to rule the Republic.

In Genoa the aristocracy was not so long established, nor so uninterrupted in its continuance. But nothing like a Mixed Government was ever established. There were frequent alternations of aristocratic or oligarchical tyranny and mob government, each faction wreaking its vengeance on its adversaries when it obtained the advantage. But for the most part the people were subjected, and the patricians ruled the state.*

Of the other Italian Commonwealths the history has been generally alike; first a pure Aristocracy; then a mixture of Democratic influence as the people's wealth increased; then for a while a subjugation of the Patricians to the burghers; followed by an entirely Aristocratic constitution, which ended in purely Monarchical Government.†

The United Provinces have undergone several revolutions, but the most important change was that which gradually took place in the beginning of the seventeenth century, and converted a Democratic Government, slightly mingled with Monarchical

* Part II. Chap. xxiv.

† Part II. Chaps. xxv. xxvi. xxvii.

institutions, into a Burgher Aristocracy. The House of Nassau has more than once been reduced for several years to a state of nullity in the government; but the favour of that illustrious family with the people has always been sufficient in the long-run to retain its power, and keep the government mixed. William III. was enabled, by his great success in establishing our free government and obtaining the crown of this kingdom, to place the Mixed Constitution of his own country upon a more stable foundation; and since that period it has, with little interruption, formed a monarchy, really of a Mixed kind, and, since the overthrow of the French power, a Mixed or Limited Monarchy in name as well as in substance.

The government of France was never really of a Mixed kind till the results of the Revolution in 1789 established a Limited Monarchy, which the Republic displaced, but which was afterwards restored on Napoleon's downfall. The powers of the States-General and Parliaments were too ill defined to constitute a Mixed Monarchy before the reign of Louis XIII.—In Arragon the Cortes was of sufficient weight to constitute a Mixed Monarchy, from the expulsion of the Moors to the reign of Charles V.*—Perhaps we may give the same name to the Government of Sicily.† But a really Mixed or Limited Monarchy in both Spain and Portugal has arisen out of the changes brought about by the French Revolution, and the wars which it occasioned.

We have seen, in the history of the Scandinavian governments,‡ that the tyranny of the sovereign was succeeded by a more intolerable tyranny of the nobles, which made the constitution both of Sweden and Denmark only Mixed Monarchy in name, the sovereign's share of the supreme power being exceedingly inconsiderable, and the people's still more trifling, until by revolutionary movements, Denmark in 1661, and Sweden in 1772, but more effectually in 1789, became subject to absolute Monarchy.

The history of our own admirable Constitution will furnish many important illustrations of the steps by which a Government becomes Mixed, or rather by which, from being composed of

* Part I. Chap. xix.

† Part I. Chap. xvii.

‡ Part I. Chap. xxi.

two, it becomes composed of the three powers. The Feudal Monarchy at first was more aristocratic than it afterwards became upon the conquest from the powerful operation of the Imperfect Federal Union. In the course of two centuries a beginning was made of introducing the popular power into the system ; but it was not till the end of the fourteenth century that this change had been completely effected, and that the Mixed Monarchy can be said to have been fully established as we now find and now enjoy it.

CHAPTER XIX.

VIRTUES AND VICES OF MIXED GOVERNMENT.

Defects of checks in all pure Governments—Illustrations; Athens; Rome; Eastern Despotisms—Mixed Governments the only effectual check—Virtues of Mixed Government—Its checks and balances perfect—Secure full discussion—Protect Rights and Liberties—Maintain the Stability of the System—Alleged vices of Mixed Government.

THE advantages of Mixed Government flow naturally from the imperfections that are always to be found even in the most finished form of pure government. We have thus been led incidentally to note many circumstances belonging to this branch of our subject; because, as often as we have considered the inconvenience of the pure form, and shown how it was necessary to temper its principles, we have found that there was a radical defect in all the contrivances which could be resorted to for that purpose, and that nothing but a departure from the strict and rigorous system could provide checks and balances which would prove effectual. Now that departure was in truth the introduction of some other principle, or the mixture of some other form with the form under consideration.

The reason why these checks were not wholly to be relied on is plain. If the government must be kept in its perfect purity, all the checks must more or less partake of its fundamental principle; consequently, all of them must be liable to the same objection, and require modification or aid to reinforce them. But that could not be given without the introduction of something belonging to another form of government, some principle alien to the genius and spirit of the constitution in question. Thus, to take the example which we resorted to in the last chapter; if it is desired to check the rash and erroneous acts of a purely popular legislation, the utmost that we can do by means

of devices not inconsistent with the purely democratic principle, is to frame rules of proceeding which occasion delay and give time for deliberation. But the same power which formed these rules may abrogate or suspend them; and the occasions on which they are most likely to be dispensed with are precisely those when excited passions render their controlling operation the most necessary to prevent mischief. If the House of Commons, or Chamber of Deputies, were only restrained by their Standing Orders, how often would these be suspended when they stood between those Assemblies and the object of their eager desire? So if another Chamber, or another House, were added to those several bodies, and its assent also were required to the measure, the same eager desire to pass it would operate in that second body, if its constitution were as popular as the structure of the former. Nothing but another origin, or other duration, or other materials, can secure the checks required upon the first body's proceedings, and this is making the Government Mixed. If the only difference were, as in America, a higher qualification in the members, or a longer duration of their commission, unless they held their places for life, no effectual check would be obtained from them; and even that would be of very inferior efficacy to the restraint imposed by a totally different order of men, as a hereditary privileged class, or an executive magistrate holding his office by inheritance or chosen for life.

Thus it was clear, when we examined the checks provided by the Athenian constitution, that they were with difficulty discernible; that they were very important, compared with an absolute Democracy, which, without any such contrivances, could hardly continue its existence; but that they were so precarious as to be in the hands of the sovereign people, at whose mercy, after all, the government necessarily was; and, accordingly, many acts of gross injustice to individuals, and of most fatal rashness to the state, were very frequently done, notwithstanding all the checks which we had occasion to describe (Part II. Chap. II. Part III. Chap. XIII.). To take but one instance in order to satisfy ourselves how exceedingly precarious all such checks were. The rule was, not to let any one, under pain of death, propose the repeal of certain fundamental laws. But when any repeal became popular, the orator appeared with a halter about his neck in the general assembly and made the proposition with the applause of

the meeting ; thus at once testifying to the existence of the law, to his sense of its stern rigour, and to his confidence in its utter inefficiency. So at Rome, an Augur, one of a numerous college, could any day, by pronouncing the solemn word "*alium*" (that is, "*ad alium diem*") cause the postponement of a question in which the people took the greatest interest. Yet who can doubt that the multitude had power to deter such priests on many an occasion which demanded their interposition all the more that the vehemence of the popular feeling was the stronger and more overpowering ? So a slight check is provided to the caprices and cruelty of an Eastern despot, by the delegation of his powers in order to their being effectually administered, as well as by the chances of popular violence. Yet that very decision and delegation strengthens the tyrant's hands ; he often uses it to domineer with the more searching violence ; and his fear of resistance constantly produces acts of needless cruelty, in order to extinguish by terror all the sparks that might kindle into a flame.

We thus perceive that the only effectual checks and balances in any system of polity are those which depend upon the introduction of different kinds of power. The separate and independent existence of different estates or authorities, each required to concur in all acts, each free to act as it pleases, and as its separate interests prompt, each armed with some independent power of resistance to the others, is the only effectual method of preventing one body in the government, or one class of the community, from ruling uncontrolled, subjecting all the rest, and mismanaging the public affairs.

All the advantages, then, which have in any part of this work been shown to arise from checks and balances in the system of government, are peculiarly the produce of that combination of different powers and principles in which a Mixed government consists ; and it becomes unnecessary to discuss these minutely here, after the consideration which has already been repeatedly bestowed upon them. But it may be well to state that the three great advantages which a Mixed government possesses over every other, are its protecting the public interest from the risk of rash, ill-concerted councils, its securing the freedom and the rights of all classes in the community, and its maintaining the stability of the political system.

1. The prevention of rash counsels is most surely obtained

from the conflict, or rather the mutual counter-action, of different independent powers in one system. If one party is to detail, however ably, however fairly, before a judge the whole merits of any case, unopposed, we know full well how many views of the subject, how many arguments, and how many facts, will escape his best attention. But if two, less able, incomparably less candid, appear before the judge, nay each as unfair and as violent in his statements as possible, their contention will leave no point unsifted, and the whole matter will soon be ripe for safe decision. In the former instance, the judge will hesitate and pause, fear to go wrong, falter in doing right; and after his utmost care he will never be quite sure that he has avoided error. In the latter instance he will have no anxiety at all, unless the facts are necessarily obscure, and the principles ill ascertained by the law, and he will generally give a speedy, a complete, and a correct decision. In like manner no better safeguard can be devised against an unreflecting course of proceeding than the consecutive discussion of each measure by bodies which have different, often conflicting, interests, and which will unavoidably take very different views of the same question. Haste, rashness, is with certainty thus excluded; error, misdecision, becomes exceedingly unlikely.

2. The effect of mixed government in protecting the rights and liberties of all classes is equally striking, and if possible more important. In truth there can be no other safe and secure protection for the whole community. If the Sovereign is absolute, there is no resource but resistance; and long before public wrongs have ripened into the general desire of redress which makes resistance safe or even justifiable, extreme oppression may have been exercised and great hardships endured. An Aristocracy is not so fatal to liberty or so fruitful of wrong in one respect, that the mutual jealousy of the patricians and the parties which are the natural produce of this soil afford some protection to the people at large. But we have seen how oppressive the government of a select body may be in other respects; how it may even be worse to bear than the absolute dominion of one (Part II. Chap. VI.). In a Democracy, there is no security for the party whose rights are grudged and whose influence is dreaded by the ruling power; the tyranny and intolerance of the majority has been already fully described, and

it has been found perhaps the worst of all (Part III. Chap. xv.). All the checks provided in any one of these three constituted out of its own materials alone, are unavailing to make every one's rights secure, and to provide for each class a safeguard against the too great power of the preponderating party. But when there are opposing or conflicting interests, no one body in the state can set the law at defiance with so great facility as when all power is centered in one description of the community. A natural jealousy arises of each other when the supreme power is lodged not in one but in several estates or orders; and hence not only does it become difficult for one of these to encroach upon the rights of the other, but neither is likely to permit such an encroachment upon a third party,—such as a third estate where there are three, or a portion of either where there are two. If an Aristocracy were disposed to maltreat a portion of the patrician body in a government composed of two branches, the representatives of the people being one, the latter would assuredly take the part of the oppressed class of patricians. So the sovereign, in a state where there was only a popular body besides, would not suffer a measure to pass which should be levelled at the just rights of any part of the people. But the most perfect Mixed government is that which consists of a body representing each class,—the people by their own deputies, the men of rank and wealth by the aristocratic chamber, and the executive departments of the State, military and civil, by the sovereign. Let any subject be aggrieved by the popular deputies, the aristocratic body or the crown will seek to have him righted. Let any executive officer be aggrieved by the patrician body, the popular assembly will join the crown in obtaining redress for him. Let any just privilege of rank and station be invaded by the Crown, the people's deputies will join the Aristocratic body in defending it; and if the nobles were to be oppressed by the people, they would find a resource in the sovereign against this oppression.

3. The stability of the mixed system of polity is evidently in much less hazard from internal commotion than that of any pure government whatever. Every thing which tends to secure men's rights and prevent injustice is a guarantee of internal peace, because it removes the most powerful cause of violent change—unredressed grievances. Moreover, when each class

of the community is represented effectually in the legislature of a country, a safety-valve, as it were, is provided, by which any dangerous spirit of discontent may escape. A popular representation alone is indeed an excellent contrivance for this purpose; but there may be no representation of the minority; or some classes, as men of rank and wealth, may be imperfectly represented, and at any rate the majority of a single body is supreme. When a second body is provided, independent of the popular deputies, the chances of serious discontents are diminished, in proportion as all whom the latter discontent and vex find their protectors without the necessity of recourse to any violent measures. Besides, when all the stability of any government depends upon the security of a single power in the state, the system rests upon a much narrower basis than when several bodies share the supreme power. The popular deputies form no doubt the most secure, because the broadest foundation for the government; but suppose a powerful faction, discontented with the proceedings, and impatient of the oppressions of that popular body, should intrigue with a foreign power, or with a successful commander favoured by this dissatisfied minority, how much less securely would such a system be enabled to meet the peril, than if there were an aristocratic body to resist these consequences of the popular domination, if it had failed to prevent that oppression itself? That the existence of three branches affords a still safer refuge from the violence which would overthrow one is equally obvious. In fact, the great hazard of all revolutionary movements is the operation of some sudden and violent impulse. The action of three co-ordinate bodies, beside removing the temptation from all classes to act against the established government, resists the change when it is attempted, and gives time for the machine to right from the shock.

The vices of the system, which has so many and such precious virtues, lie within a narrow compass indeed. It may be charged with a tendency to multiply parties, by giving to every class of men a protection, and thus showing that each faction may make itself powerful in the administration of affairs. But experience has shown the tendency of parties to multiply in both aristocratic and popular governments of a pure form. We may be told that the establishment of more orders than one tends to impair

the vigour of the administration. But when against this is set the evil of rashness, to which the most pure and vigorous government must needs be exposed, because of there being no check upon its movements, a sufficient reason is given for preferring that safety, which in the long run will even prove an increase of all useful vigour. We prefer the engine which in twenty-four years cannot run the hazard of exploding, to that which, working much more rapidly, may be blown up in twenty-four hours.—If it be said, and this is the common ground of complaint, that the people's interest requires an unobstructed progress, which the counterpoise of a sovereign or of a privileged class impedes, and that the good of the many is thus sacrificed to the benefit or to the prejudices of one or of a few—the answer is, that without denying the possible occurrence of cases in which this high price may be paid for the benefits of a Mixed Constitution, yet those constantly enjoyed benefits, of equal rights, good government, and security against wide spreading revolution, are well purchased by the payment of that occasional price. It may be added, that the virtues or vices of any government are to be estimated, not by taking an account of its working for a few years, but on the long run, and that the security of this Mixed System in the long run will conduce more to the progress of the people's interests, than a removal of all the obstruction which the checks and balances can create.

CHAPTER XX.

ULTIMATE TENDENCY OF MIXED GOVERNMENT.

Ultimate destiny of all Governments the same—Universal progress towards Popular Power—General Improvement in Men's Condition and Habits—African Despotisms—Oriental—Connexion between Improvement and Change—Mitigation of Absolute Governments; East; Prussia; Russia—Effects of Revolution on Despotisms—General interest in extension of popular Rights—Popular Improvement makes Checks less necessary—Illustrations from English History—People's Rights derived from their Power—Advance of Power with Improvement—Prophetic View of an improved Age—Upper Classes and Property safe—Representation safe—Religion safe—Double Legislation safe—Hereditary Executive less certain to be maintained.

It is now fit that we consider the tendency of all Mixed Government, with a view to ascertain whether there be any qualities inherent in its nature which tend to prevent change from ever taking place in its structure, or whether its composition is only such as to ward off that change, and preserve longer than any other form of government is likely to preserve its unaltered existence. We have observed the reasons which give Mixed Governments a much better chance of escaping violent convulsion, and the revolutions that such accidents occasion. But it does not follow that there may not be a gradual progress towards change which cannot be prevented. Everything in this discussion must depend upon the materials of which the Mixed Government is composed, so far as regards the first change; but we shall presently find, that ultimately the same alteration is likely to be undergone by all governments, and that in the end all will probably reach the same goal, although they may have started from points at very different distances from it, and gain it by very different routes.

The inevitable tendency of every political system must be towards giving an increased power to the bulk of the people. So long as the human race is by nature fitted for improvement, no political circumstances can wholly prevent men from making some progress in bettering their condition and in extending

their knowledge. In some of the degrading and always sanguinary despotisms of savage countries, the motion of society may be so slow as hardly to be perceptible. We have accounts from travellers of nations in the interior of Africa, subject to tyrants whose whole existence seems to be a series of bloody murders. Nevertheless it cannot be denied, that this dreadful state of things has been in great part produced by the execrable slave traffic, which civilised and Christian men for so many ages have driven upon the coasts of that vast and benighted continent. If the same habits of mutual depredation, and of spilling each other's blood, which now make part of their existence, had distinguished those barbarous tribes a thousand years ago, the race must by this time have been extinguished. When the Slave Trade shall cease, we have reason to believe that even over the African desert the light of religion and of science will at length dawn, and the only exception be removed to the general rule, that human society is everywhere proceeding with a motion more or less rapid towards general improvement.

In the east, where the systems of polity are civilised, though the nature of the government is such as to keep the people in great ignorance, a perceptible progress is making. The trade of the active and industrious Europeans can nowhere be entirely excluded; intercourse with foreigners is necessarily maintained; and even in China itself, hitherto the most unchanged of all empires, the communication of more light seems finally to have become inevitable from the events of late years.

It is quite impossible that in any government, however despotically framed, the sciences, the arts, the learning, the moral and political knowledge of the people should increase, and with these their comforts, their possessions, and their enjoyments, without the wish being communicated to them of bettering their condition politically; for they must, independent of all the natural desire which men have for power and distinction, learn that they suffer many unnecessary risks, are exposed to many losses, and encounter many obstructions and inconveniences in their pursuits, from which they would be protected were the frame of the government varied under which they live. To imagine that if Turkey were completely civilised, and men possessed both the wealth and the knowledge that bless Western

Europe even under its most absolute monarchies, a bashaw could be sent into any province to enrich himself by plunder and confiscation, securing impunity by suffering the common master to pillage him in his turn, is wholly absurd. The two things could not co-exist in the same system ; the outrage never would be attempted, or if attempted, would not be endured. It is not going too far to affirm that the sultan, it is certain that the bashaw of Egypt, rules by himself and his officers very differently from the Tamerlanes and the Bajazets of a former age. Compare the mild and enlightened reign of the present Prussian sovereign with that of his predecessors a century ago, and you will be satisfied that, however little the form of that great military monarchy may have been changed, no prince royal could now be called forth to see his favourite strangled before his window for the gratification of a tyrannical father's splenetic humour. No Baron Trenck could be immured in a dungeon for twenty years to expiate the misfortune of having found favour in the eyes of a princess. Russia is as despotically governed as any European prince could now venture to rule his people ; yet there is no possibility of a czar beheading his mutinous guards with his own hand, or of a prime minister being sent in the night to Siberia, with his family, because a new cabinet had been called into office.

The first step in the general and inevitable change has been made in all these countries. The government generally remains the same, but the exercise of absolute power is tempered and restrained by the improved spirit of the age, by the force of public opinion abroad, as well as at home, and above all, by the great improvement in the knowledge, manners, and character of the people over whom those governments are established.

But this improvement cannot continue, much less can it go on advancing, without bringing home to every man's mind the sense of what is left unaccomplished ; the great want of security for the continuance of what has been gained ; the abundant field which there is for acquiring much more. All men's wishes, therefore, are unavoidably pointed towards one object—the obtaining a legal right to that relaxation of absolute power which they always have gotten, but only as it were by a kind of happy accident, in part owing to the personal character of the sovereigns themselves. Let it be added, that these sove-

reigns, partially in advancement of their age, must generally find it their interest to give more, and to secure the people by better institutions, because this is in truth securing themselves. Nothing is less stable than despotic power; of this we have repeatedly seen proofs in the First Part of the present work. The convulsions to which despotisms are subject do not often change the government; but they change the person, the family, the dynasty, and that is as bad for the individual rulers as any revolution. Besides, all princes have now learnt that some portion of popular rights being conceded, the increase of public wealth irresistibly follows, and that no country can be made available to the financial supply of its governors, without the form of a popular constitution.

This is the next step in the political progress of all countries, even of those subject to the sway of absolute princes. But of course these monarchs, who might be willing enough to allow certain improvements in the institutions of their country, would be desirous to keep the government of the Mixed form, which secures to themselves an ample power, only so far mitigated in its exercise by the grant of popular rights as to augment their security and financial resources. They would strive, therefore, to secure the government from any further change; and the aristocracy, their ally generally in this conservative plan, would join in seeking to prevent any new acquisition of the people. The nature of Mixed Government, as we have seen (Chap. XIX.), is well calculated to further this design; and no doubt such a government tends longer than any other, in all ordinary circumstances, to preserve itself without material change, in consequence of its different branches pulling different ways, and resisting any usurpation of either one or the other, or even of any combination between two. The general good, too, as well as the interest and the pleasure of the sovereign and his patrician allies, requires, as society is at present constituted, this permanent stability of the Mixed Government. We have seen how absolutely necessary it is that checks and balances should be provided to regulate the movements of popular government; how fatal the mischief would be of the people ruling uncontrolled.

But the whole reasoning which proved the necessity of such contrivances, the whole foundation of the preference given to

Mixed Government by the result of our inquiries, consisted of one position—the incapacity of the people to govern themselves. Remove this incapacity, and that reasoning fails, that reasoning no longer can sustain the conclusion to which it conducted us. The whole question, therefore, is whether or not the people are ever likely to improve themselves so much as to be quite capable of self-government. Until that happy time arrives, their best interests, their only safety, are bound up with a government judiciously mixed, one in which, as Cicero says, the simple elements of political power are wisely and moderately blended. When men have become so conversant with state affairs, not the niceties and details, but the general principles of national polity, so familiar with those things which constitute their own true interests, so intimately persuaded that their concerns, to be managed profitably for themselves, require to be conducted deliberately, calmly, honestly—no one can doubt that the conflicting and counteracting powers of a Mixed Government are no longer necessary; and that the infant people, become of full age, and perfect stature, and matured faculties, may safely, nay, advantageously, be entrusted with the management of the people's own concerns. But it cannot be doubted, that when this state of things exists, and the people have become well qualified to govern the state, without any more control than they feel it for their own interest and their own convenience that they should have, they will obtain this full power. There is no authority in any state which is always on the increase except that of the people. They alone are constantly multiplying in their numbers; they alone are always increasing their wealth: they may not become more learned and more sagacious than the upper classes, but they are always improving their intellectual resources, always coming nearer and nearer to the best informed of their superiors in station. The indefinite increase of their accomplishments tends to lessen the distance between them and the wealthy few; tends not only to lessen the veneration with which the rude regard the refined, but to lessen the regret at being less wealthy, and to diminish in their eyes the importance of their physical privations. Hence an indomitable spirit of self-possession and independence, a habit of estimating men's

worth according to their real and not their factitious superiority, a disposition to regard with respect only those qualities which the humblest may possess, and those acquirements which all may make. When such a state of things shall exist in any country, it is clear that the preponderance of the people must become far too great for all the rest of the community combined.

In order to try these positions, let us revert to the state of this country before the towns were admitted to send representatives to Parliament. They were summoned, without any doubt, for the purpose of making their wealth liable to contributions for the King's service. But if no such motive had led to their admission, a share of the government they must needs have obtained, either by fair means or by foul, in the course of half a century, devoted to the further improvement of their knowledge and their wealth. Who can suppose it possible that the whole government should have remained in the hands of the Sovereign and some forty or fifty barons with half as many prelates, if the number of the people had been increased to so many millions as we now reckon, and their information upon all subjects had been improved as we are supposing it to be in the case which has been put? Then the changes which have of late been effected in the Representation, and which have so greatly augmented the people's influence, were entirely caused by the growth of the popular numbers, and resources, and information. Those changes might have been postponed a few years, perhaps half a century longer; but they were altogether and they were unquestionably owing to the increase and the improvement of the people.

The people, then, originally as entirely excluded from all share in the legislature as they now are in Russia, or as they still are from all direct share in the executive government, have, by dint of their augmented power, obtained a large, perhaps an undue proportion of the legislative power. It is manifest that their further increase in numbers, wealth, and knowledge, must go on, and at an accelerated pace, while neither of the other orders of the state can improve their position in any material degree. It seems to follow, that the people will thus in time gain a material accession to the large share of power which they at present possess. If not, there can no reason be assigned for their ever having gained so much; they have only attained their

present political position, their position in point of right, by such an increase of actual power, of power in point of fact, as we are supposing, to go on still further augmenting.

It is however possible, and this is carefully to be considered, that this increase of real power may outstrip the improvement of the people, and anticipate the period when sufficient capacity of self-government would make it quite safe to trust them with the full management of their affairs. There could not be a greater evil, above all to themselves. That change which, gradually brought about, with full preparation and only effected when they were fit for it, would be safe and productive of neither shock nor fear, would prove utterly destructive of the best interests of society if suddenly wrought by violent means, through the impatience, the ignorance, or the profligacy of the people and their advisers. Against so disastrous a consummation it becomes the bounden duty of every well-wisher to his country, and, above all, every friend of the people themselves, earnestly to struggle, by all the means of reason and instruction, by all means of administrative vigour, nay of open and steady resistance, if the resources of argument and information should be exhausted in vain.

The reader of this chapter is, however, referred back to the Preliminary Discourse, and to the Second Chapter of the First Part, for a full explanation of the sense in which we are here taking popular Education and improvement, and for a statement of their probable effects in rendering safe the political change which, it is not doubtful, they are calculated to produce. He would commit a very great mistake who should imagine that we can easily picture to ourselves the feelings, the conduct, and, generally, the condition of the people, when enlightened by study and reflection, from anything that we now see around us. He would be equally led astray by his present impressions who should feel any great alarm at the prospect of more extended influence being communicated to a people well prepared for self-government, those impressions being derived from the present conduct of men half aware of their duties, and almost entirely ignorant of their true interests, men, perhaps, under the guidance of a few unprincipled leaders, in whose hands they are tools of mischief, unaccustomed, and indeed unable, to form their own opinions, or act upon their own views.

It would be a pleasing task, if it did not run the risk of being deemed too speculative and romantic, to pourtray in our imagination the happy condition of our humbler fellow citizens, and of the state which their labour and their virtue sustains, when instruction in all useful knowledge shall have rendered them fit safely and profitably to possess the share in their own government which God and nature designed to be their portion—to see in our mind's eye the time when the voice of party should be still and its hand powerless ; when profligate leaders, albeit in a holy garb, could no more move the million from their sober, and honest, and steady purpose well understood, than they could disturb the moon from her course in the heavens ; when no jealousy of higher station or more ample wealth, on the one part, should be encountered by supercilious disdain of plebeian merit, and alarm at plebeian encroachment on the other ; when each class should feel intimately persuaded that its own advantage was bound up indissolubly with the profit of all other orders in the community, and each nation should desire for its own benefit the prosperity of all its neighbours ; when no echo of foreign levy should interrupt our repose, no provision against domestic strife exhaust our resources, no civil broils ruffle the serene aspect of our horizon ; when with general consent many of our most costly establishments could be with all safety given up as no longer wanted to inform or to guide our system ; when graceless zealots should contend no more for useless forms of faith, nor political fanatics for forms of government ; when devotion to the Creator should cease to be testified by discharity towards his creatures, and wretched abstract dogmas to obstruct the progress of all the light that most improves, refines, exalts our species. But it may be better to turn from a scene which can for many a long day only vex and tantalise those who are doomed yet to linger among other realities ; and direct our attention towards one or two illustrations of the consequences which may result from a people, well prepared for the task, assuming a more complete control over state affairs,

And first we may observe, that some things must ever remain in their present state, what progress soever shall have been made in improvement by the people or their rulers. There will always be a great difference in wealth, which must of necessity be very unequally distributed. There will always be a great

majority of the people whose time is chiefly devoted to laborious occupation. There will always, therefore, be a real distinction of ranks, and an artificial founded upon the Natural Aristocracy. The influence of the upper classes will probably gain as much from the intimate persuasion of the lower that their intellectual resources are greater from right cultivation, and from having more time at their command, as it can lose by the distance between the two orders being very materially diminished. Not to mention that the humblest classes will become aware of the general good requiring the property of all to be held most sacred. Hence, far from any disposition growing up to pull down those upper classes, the conviction will become universal that there are certain functions which they are best fitted to perform, and that their continuing to direct the executive government and administer justice will best conduce to the good of the humblest person in the whole community. It is therefore quite certain, that if the popular change, of which we are contemplating the possibility, only takes place when its due season has arrived, there will be no risk of society being deranged by any inroad upon the present functions, any more than upon the possessions, of the patrician classes. Whatever advantages in either the one or the other respect they now enjoy at the expense, and unjustly at the expense, of the community at large, they must be content to abandon; no further sacrifice will be exacted from them. The general improvement of the people will assuredly remove all the objections which we found (Chap. xvi.) to the existence of a Religious establishment, and render it quite compatible with the most popular form of government. But, moreover, the grounds of the position there laid down, as to the necessity of a State Church, were all intimately connected with the people's ignorance and proneness to follow various teachers. The existence of a State Church may therefore become much less indispensable when they are so much improved as to remove those mischiefs and dangers which in that discussion we had occasion to contemplate.

The Representative principle will be quite secure. It rests upon grounds of absolute, of physical necessity. No improvement of the people can ever make it possible for their whole body to meet in public assemblies, or to rule a great state. All improvement in political knowledge will only impress them the more

deeply with a sense of the inestimable value which belongs to the representative system. An universal right to concur in the exercise of its powers will of course be established; but far less disposition will be shown than at present to interfere with the conduct of those to whom the trust has been delegated.

That legislation by a single chamber should ever be willingly adopted by any people, how enlightened soever, nay rather the less likely is it to be adopted the more enlightened the people are. For the errors which a double discussion by bodies differently constituted and differently originating, is calculated to correct, are not errors of ignorance or of ordinary haste, but of the unavoidable imperfection which belongs to men, and their utter inability to see far before them; they must make up for this defect by thorough and searching inquiry, and this can never be secured unless bodies differently constituted successively examine each measure. No improvement can ever make the people more enlightened than the members of the Commons' House of Parliament were in 1834, when they passed the acts which have been adverted to in the Eighteenth and Nineteenth chapters. A second chamber sure to view all subjects with other eyes is the only remedy it affords; the only means of preventing error.

Whether the necessity of an executive power, wholly independent of the people for its existence, may not become also apparent even in the state of things towards which we are pointing our eye, is another and a much more doubtful question. The expenses are enormous; the evils are manifold; the hazards are grievous; the necessity is very far from being equally manifest. If the people are in all respects capable of choosing their representatives, it may be conceived that they are also capable of selecting their chief magistrate, and towards a state of things which shall entrust them with this power, towards a Democratic, or at least a Mixed Democratic Republic, it may perhaps be admitted that human affairs tend in modern times. All the experiments which have hitherto been made of Republican government in old societies have begun at the wrong end. The people have been called to the difficult task of self-government without having served their apprenticeship by learning political science and practical wisdom. The failure of these trials has therefore been inevitable, and it has been complete. But it is very far indeed from proving that no old country can be governed democratically.

The possibility of such a consummation is entirely dependent upon a progress having been made by the people, which they have indeed begun, but which it will require a long course of years to finish. In the present state of society an hereditary executive, however costly in some respects, however hazardous in others, is, as we have already seen (Part I. Chap. x.), absolutely necessary ; it is our only safeguard against heavier costs and more desperate hazards than any to which it exposes our Political System.

CHAPTER XXI.

RESERVED POWERS OF THE PEOPLE.

Connexion—Influence of the Press—Popular interference; its limits—Publicity through the Press—Proper and improper influence—Illustration—Twofold mischiefs from the Press—By private Speculators; by Factions—Anonymous writing—Motives of concealed Writers—Party—Twofold evils from abuse of the Press—Athenian Mob Government—Press has disarmed itself—Progress of knowledge has disarmed it—Duty of the People.

Application of principles to Public Meetings—Popular excesses—Illustration—French Revolution; England in 1795; in 1819—Irish Meetings—General principle—Errors of Mr. Canning on our Constitution—Illustrated from County Courts; Freemen; ancient right of voting.

People's share in judicature—Athens; Rome; Modern Jury Trial—Three cases fitted for it—Its uses to the People—No admixture of evil in it.

NOTWITHSTANDING the surrender by the people of their share in the supreme power by the choice of representatives, there are certain Powers which must be Reserved to them from the necessity of the case and the nature of the thing. These are principally three in modern times: the influence of the Press; the influence of Public Meetings; and the influence of Juries in the administration of justice.

SECTION I.—*The Press.*

While the legislative power is confided to the popular representatives in whole or in part, according as the Democracy is pure or mixed, and while the executive power is entrusted either to hereditary or elective magistrates, there is an important influence, almost amounting to a direct power, exercised by the discussion of all public measures through the Press. This influence depends entirely upon the effects which such discussion produces upon public opinion, that is upon the minds of the people, by affecting whom it affects their representatives and their magistrates, sometimes exciting them to adopt measures for which the people feel exceedingly anxious, sometimes deterring them from pursuing courses to which the people feel exceedingly averse.

It must be confessed that this interference operates as an obstruction to the movements of the representative system. As far as it is effectual, it may be considered as a resumption of the delegated trust, a breaking in upon the discharge of the duties confided to the deputies. If a number of persons should employ any one to act for them as their advocate, and then prevent him from pursuing the course which his judgment pointed out as best for their interest, by meeting and passing resolutions against it, or by threatening to revoke his commission, we should be entitled to pronounce this a very unfair and a very injudicious proceeding; treating the advocate ill, and consulting badly for their own interests. Nothing indeed would justify it but a conviction that he was betraying his duty, or falling into manifest blunders in the discharge of it. But any resolutions passed for his information and assistance, any suggestions tendered for his guidance, subject to his approval, would be both fair and prudent. So the people, and they who on their part discuss public measures, would be wrong in exceeding similar bounds were the conduct of the government, including their representatives, free from all suspicion, whether of treachery or of imbecility.

But in practice these bounds are constantly overleaped, and the excess is both more likely and less hurtful in exact proportion as the people are not fully represented by their choice of deputies. If there be large classes not represented at all, then such interference can never be the subject of reprehension; it is not against the representative principle.

We may further observe, that the influence of the Press is much more slowly effectual in causing the adoption of measures which are popular favourites, than in delaying or preventing it. The occasions must be rare indeed, the unanimity of the Press and the people unbroken, their feelings deep seated and loudly expressed, to drive the government into a measure adverse to its opinion or wishes. By slow degrees alone it is, generally speaking, that public discussion can cause the adoption of plans originating more in the people's desires than in the wishes of their deputies or their rulers. On the other hand, the clamour excited against an unpopular measure has not seldom stifled it at the first, and much oftener delayed it for a while, operating in either case at the moment.

In one respect the Press is constantly operative, and produces very great good, with hardly any admixture whatever of evil. The great and immediate publicity which it gives to all the acts of the representative and of the ruler affords a most salutary check on the conduct of both, and prevents many errors being committed through ignorance or inadvertence. But this benefit of the Press can hardly be reckoned any influence or power exercised by the people. That influence or power consists in the control exerted by the printed and published and universally circulated opinions or wishes of the community. The representative and the ruler are swayed by these, and oftentimes they are not merely deterred from wrong doing, but prevented and obstructed in the honest and enlightened discharge of their duty by the clamours of ignorant or of interested parties.

The two opposite effects of this influence may be illustrated by taking the instances of its most legitimate and most improper application.

When the opinions of enlightened men, freely promulgated, are diffused and find general favour with the community; when the errors of a political system are fearlessly exposed; when the impatience of the people, under abuses of long standing, and powerfully supported, breaks out in complaints against the ruling powers; a real service is rendered to the public welfare, and no charge can be brought against the people of resuming their delegated trust, or begrudging their deputies the authority with which they have been clothed. Indeed, those deputies ought to feel contented that the cause of truth and good government is thus promoted, and the general interest consulted. They are not controlled or interfered with, but find their views rather furthered than impeded.

When the virulence of personal attack deters a representative from pursuing the course which his honest and deliberate judgment dictates; when dread of incurring printed censure deters him from doing what his duty, according to his own conception of it, requires; when to gain the applause of such as regulate the Press, or to disarm their hostility, he shapes his conduct according to their wishes;—then he shamefully betrays his trust; those who thus beleaguer him, and he who suffers himself to be swayed by his fears or by his love of praise, equally

commit an offence of a very grave kind in the eyes of all rational men.

We have hitherto been regarding the Press as either an organ of public opinion, directly moved or inspired by the people, or at least as an indication and exponent of it, coinciding with the people's views, and adopted, if not authorized, by the people. It is certain that in a good degree this is likely to be the case. In the long run the Press, if the people be not split into parties, will be pretty sure to coincide with their opinions and feelings; and where there prevail party divisions, each portion of the community will sooner or later influence some portion of the Press. But it is also quite certain that there is here, as in other processes both of the moral and physical world, action and reaction. If the public sentiments act upon the Press, so does the press upon those sentiments; and this occasions mischief of a very grievous kind to the people themselves, and to popular government. It is one of the worst evils of that form of polity, that it gives the greatest scope to this abuse; an abuse of so pernicious a kind that nothing can reconcile a reflecting mind to it but the persuasion of its being an almost inevitable consequence of free discussion, and thus regarding it as the heavy price which must be paid for this inestimable blessing.

It is in two ways that the Press thus produces its mischief. Private individuals, armed with no commission from any quarter, much less invested with authority from any power in the state, and bearing no certificate of any qualification to recommend them, assume the direction of periodical works, and do not give their names to the public. Their capacity for the task which they have undertaken is of course to be judged by the manner in which they perform it; about that there can be no difficulty or doubt. But their trustworthiness, either as relaters of facts or as guides of opinion, is a wholly different matter, and of that, the most material portion of the character which they ought to have, they furnish no vouchers whatever. They may be the most false and deceitful of human kind; they may be the most spiteful and malignant; they may be men whose names, if made known, would deprive every assertion they advanced of every claim to credit, and strip all they wrote and published of all chance of being believed or even listened to. They may have sinister and sordid views in putting forth their statements; then they may

have a personal ground of quarrel with individuals, or with parties in the state or the church ; and thus be the very last persons in the whole world whom any one would believe if the mask under which they lurk to assail their adversaries were torn away. Their narratives may be dictated by mercantile or by money speculations ; and the persons who, ignorant of the source whence these stories proceed, rush to some market to invest their capital, would be loth to risk a shilling of it on the faith of their statement did they know the purpose for which it was put forth. They may be rival authors as well as rival tradesmen, and may have published some translation of the same work, and thus have a direct interest in running down the succeeding translation ;* but they speak in the plural number, and the reader is utterly deceived, and supposes he is hearing the sentence of a just and impartial judge, when, in fact, the opposite party has, unknown to him, crawled upon the bench, and, personating the judge, delivers in a feigned voice sentence in his own favour. Again, their views may be pernicious to the state. They may be men reckless and abandoned, desirous of change for the confusion it produces, anxious to see the most desperate courses taken for the sake of that mischief, the risk of which would make all virtuous men dread even the most prudent and cautious innovations. They may be concealed partakers of abuse, creatures engendered in corruption and sustained in their noxious existence by the filth that first warmed them into life ; their names if disclosed would make the defence which they undertake of oppression and misgovernment, their resistance to the people's rights and the people's improvement, only further those sacred interests ; but they defend the misrule on which they fatten, and assail those who would reform it with the appearance of pronouncing an impartial award upon a public question foreign to their own interests.

It is endless to go through more particulars. Whoever has lived long in political society, but more especially they who have lived in courts of law, must full surely know that by such means as these are the people supplied with narratives of fact and statements of doctrine. The practice of deception becomes nearly universal. The readers are betrayed into a confidence which

* This is not an imaginary case ; it has repeatedly occurred.

they never would bestow were they aware of the authority upon which what they read is grounded, and the views with which it is prepared and promulgated.

If such is the constitution, generally speaking, of the Periodical Press in all free countries, wherever party prevails this engine becomes a very easy acquisition to any faction; and it is worked with additional vigour and increased effect. This, however, greatly lessens the evil; for as it is well known to which party each publication belongs, something like a rent is made in the veil which conceals the real authors, or at least, the names of their respective patrons and employers being given, the public are warned against believing what is said against their adversaries. It is still true, however, that the followers of each party are made to believe whatever their unknown agents may please to promulgate; and also that numberless things are published by them from their lurking places, which the respectable leaders of the several parties would be extremely loth to give in their own person.*

The consequence of this abuse of the press is twofold. There is often given to public opinion a wrong bias, which lasts long enough to create delay in the adoption of important measures, or even to produce a permanent effect upon the mind of the people. There is still more frequently an obstacle interposed to the discharge of the public duty of ministers or representatives, by the clamour excited among the constituents of the latter, and among those classes to whom the former look for support. The measures and the men have neither of them fair play. If the people really, upon due consideration, adopted the views inculcated upon them, no one could complain of the result; it is one of the consequences of a free or popular government. But what we have a good right to complain of is the effect produced by a very few persons who, to serve their own or their patrons' purposes, mislead the people, deceiving them by groundless

* By far the worst instances of these great abuses are to be found in America, where, nevertheless, some of the editors give their names unblushingly to that society which they daily outrage by their detestable publications. This excess of effrontery could never be tolerated in this country, where, however, persons pretty generally known almost as much as if their papers bore their names, are known to drive a most scandalous traffic in elander, sometimes to gratify political parties by whom they are paid, sometimes still more wickedly to extort money by means of threats. The Lord Chief Justice has lately obtained a most valuable enactment to check this abominable practice.

statements into erroneous opinions, or inflaming them by well-contrived violence into unruly feelings.

There was no abuse in the Athenian government more grievously felt than the power of the profligate men whose practised eloquence "wielded at will that fierce democratic." Their arts, and their shameless want of principle, are well known, and we have, in a former part of this work, had occasion to contemplate some of the mischiefs which they did. Among us there are very different talents, no doubt, brought to the same work of swaying the people; but though of an inferior order, those talents are perfectly well suited to the work they are brought to do; and, accordingly, the Press has with us succeeded to the influence of the orators, only that the latter came manfully forward in their own persons, and encountered the scorn or the execration of mankind when they were found to have been malignant or treacherous guides.

There is one remedy for all this, but to those who regard the uses of the Press as very important and chiefly lament its abuse for their sake, it is a melancholy one to contemplate. The evil tends by its excess to work its own cure. It is said that in America no effect is produced by the assaults on private character, or even on the estimation in which public men are held, from the overdone abuse of the Press. Every one must be aware how inconsiderable, even in this country where the Press is far more pure, its influence has become of late years, in consequence of the greater prevalence of slander and violence in its productions. Thus a kind of remedy is provided by the excess of the evil.

It has often been questioned whether a restraint should not be imposed upon the Press, with a view to check those abuses by which it at once works mischief to the community, and lowers its own value for good purposes. The more closely this important question has been considered the more plainly has it appeared that any such interference would be dangerous in the extreme. Beside the certainty that it would, if effectual, increase the power of the Press to an inconvenient degree, it would tend to impede the progress of knowledge and to fetter the freedom of discussion. There would be no possibility of devising any mode of restraint which should not place an undue control in the hands of the government. The conductors

of the Press, labouring under the imperfections of the libel law, have occasionally desired that they should have a censorship placed over them, in order to be secured from the risk of prosecution under a law which is vague and uncertain, and ever liable to be abused. But little did they reflect that, a previous licence being required, it must at once destroy their independence, and thus not merely obstruct their usefulness, but undermine their whole character, influence, and means of supporting themselves. An amendment of the law of libel, which shall at once protect authors and publishers from oppressive and vexatious prosecutions, and protect individuals from the slanders of concealed enemies, giving a due check to the dissemination of seditious, obscene, and blasphemous matter, is the only remedy which can safely be adopted for the mischief.

The people, again, can only be released from the control which is now exercised over them by the progress of knowledge, and the efforts of courageous and enlightened men to stand the brunt of anonymous attacks, while they inculcate sound opinions, exhorting their countrymen above all things to think for themselves, and suffer no unknown writer to dupe and to betray them. Lord Melbourne, when at the head of the Liberal party and of the government some years ago, earned the gratitude of his country by the honest declaration which he made in the House of Lords (doubtless with some rhetorical exaggeration), that it remained to be seen how long the people would endure a press which made it a general rule of its conduct never to tell any truth, and always to deal wholesale in falsehood. But the people must open their eyes to the errors and the vices of their false guides. They may be well persuaded of these, acknowledging them as often as the subject is broached; they may be disgusted with the reckless statements which are palmed upon them; they may feel alternately indignant and contemptuous at the solemn importance of anonymous sentences condemning or absolving, and the presumption of the dictation issued to the community and the government by the most obscure individuals, only grounding their importance upon the fact of their being unknown. But this is not enough; the people must cease to let anonymous statements influence them, merely because it is repeated seven times a week: they must learn to suppose that a thing being printed does not make it true;

they must give over running after slander and scurrility, as the only interesting composition; they must regard subjects and measures as of more importance than persons; and they must read for the sake of instruction, not for the momentary satisfaction of having their merriment excited or their spleen gratified. When the diffusion of useful knowledge shall have so far improved the habits of the people, then no such evils will result from the Press as we have been contemplating. It will be the source of great and unmixed benefits to the government and to the people; duly checking the one, usefully enlightening the other; saving both from the errors alike of rashness and of sloth.

SECTION II.—*Public Meetings.*

Much of what has been said in the last section is applicable to the subject of this. The people's right of Meeting in large bodies is unquestionable in every free country. The deliverance of petitions to the government and to the legislative assemblies; the sending instructions to their representatives; the complaining of grievances which may have escaped the attention of those representatives; the keeping a watch over them in order to prevent any neglect of their duty or betraying of their trust; all these things require the people occasionally to assemble, and all of them are consistent with the delegation of the people's power. But these rights must be soberly and moderately exercised. If the people threaten their representatives or the executive magistrates; if they dictate their line of conduct in any given case; much more if they chiefly by their numbers or the overawing appearance of physical force, or by the frequency and regularity of their Meetings, show an intention of usurping the functions of their deputies; then they resume the delegated trust, and the representative principle is wholly violated.

Nothing can be more certain than that the worst excesses of the French Revolution were occasioned by the interference of the people with the proceedings of the Legislative Assembly first, and afterwards of the National Convention. Hardly a day passed without some popular commotion; and it was the ordinary spectacle in the Legislative Body to see mobs enter the Hall, and demand the adoption of certain favourite measures. It was, I remember, usual to say in those days that the

whole of the mischief arose from suffering the galleries to interfere with their plaudits or their hisses, and from admitting strangers into the body of the Assembly when they came to petition or to remonstrate. These were, assuredly, great evils, and productive of further mischief; but they were only fruits of the same bad plant which would have shed destruction over the infant republic had the galleries been as silent and submissive as our own, and the doors been closed like ours against all intrusion. The people, or at least a portion of the people, both in Paris and in the great provincial towns, had only partially given over their power to the Assembly and the Convention. They were still far too much excited by the transactions of the day to bear in silence their exclusion from the active exercise of their power, to sit quietly by while their representatives performed the whole functions of the government. They accordingly were distributed in societies and in clubs; they had daily, or rather nightly, meetings to discuss the proceedings taken by their deputies during the morning; they arrogated to themselves the right of approving or rejecting all that was done by the constituted authorities; and they knew their own power from the physical force in their hands well enough to rest satisfied with nothing short of an admission to a direct control over those authorities. The numbers of the clubs themselves, and their immediate retainers, were sufficient to have operated upon the government; but they had a direct communication at Paris, through the municipality, and in some of the other great towns, less regularly, but almost as effectually, with the rabble of the streets—men fit for any desperate enterprise, and seeking to gain by the confusion which to all the good and the wise presents the aspect of the worst political ills. It was, in truth, the control of the government in the hands not so much of the people as of the mob; and, accordingly, the party chiefs used that mob more effectually for their own factious and selfish purposes than their influence in the legislature itself. This is no doubt an extreme case; it was during a revolutionary crisis; and had anything of the same kind been continued after the tempest passed away, there would have been established an anomalous and mongrel government, which in no respect deserved the name of representative. The excess of the evil worked its own cure. The Reign of

Terror strengthened whatever constitution succeeded that of the year 1793; and the horror of mob violence continued not only throughout the Directorial government to prevent all direct interference whatever of the people, but was the main prop and stay, first of the Consular, and then of the Imperial regimen, in both of which the people were deprived of all influence, direct or indirect.

In this country we have been at different times visited with the abuse of Public Meetings. In the year 1795 they were prohibited by statute, and, as it appears to me, without a sufficient warrant from the extent which the mischief had reached. The consequence of this was unfortunate for the government of that day. It is very possible that the right of meeting might have been so far abused in the course of a few months as to justify in all men's eyes the strong measures adopted by the legislature. It is quite certain that few could perceive the strength of the case upon which those measures were grounded, although they were easily carried by the strength of the government.

In 1819 the case was materially different. Immense multitudes had been accustomed to congregate; and there was reason to apprehend the effects that might result from such displays of physical force. Many friends of popular rights were convinced that some check had become necessary, some regulation at least of such assemblages; and, among others, I well remember my friend Lord Hutchinson, when I complained of the Six Acts, saying that he thought the Whig party should be thankful they were out of office, and that the odium of passing some such measure was thrown off their shoulders upon those of their adversaries; "For depend upon it," he said, "the right of Meeting at all is in jeopardy from such assemblages—so numerous and so crowded." My opinion, however, that these repressive Laws were not required is strongly confirmed by the circumstance that a general election occurred within four months of their being passed, and this falling within the exception in the provisoes, public meetings were everywhere held, with all the excitement of such an occasion, and without any breach of the peace.

The late proceedings in Ireland belong to another class. They are, without any doubt, inconsistent with even the sem-

blance of a regular, above all a representative, government. Meetings of 30,000 and 40,000 persons held all over the country, and so frequently held that they seemed to be one body constantly adjourning and re-assembling, are wholly subversive of the legislature's and the government's authority. Their being peaceable in their demeanour, chiefly from the strict discipline which their leaders, lay and clerical, exercised, rather increases than lessens the risk attending such proceedings. The danger of violent outrage, the alarm excited among peaceful men, the intimidation by which some are forced to attend, others deterred from counter proceedings, are of themselves sufficient to prove their illegality. But their manifest tendency to overawe the government and the parliament is sufficient to demonstrate the necessity of suppressing them at all hazards. If they had been permitted to go on training the whole people, and so far disciplining them that only one step, that of arming with pikes, would have been wanting to convert half a million of men into a rebellious army, the highest public duty of the government would have been betrayed. But if even the system had been suffered of immense Meetings held twice a week on one subject, and showing great physical force, though never used to break the peace, there can be no doubt whatever that the government of this country would have ceased, as far as Ireland was concerned, to reside in King, Lords, and Commons.—It would have been transferred to other, and to the worst hands.

It is never to be lost sight of that such Meetings as we have been speaking of, and indeed all popular assemblies, are convoked, not for deliberation or for discussion, but for very different purposes. They are attended by men all of one opinion; all engaged heart and soul in the pursuit of one object. They meet to excite and influence each other; to give vent to feelings which they have long entertained and cherished, or declare opinions which they, or some person for them, have already formed. They bear no contradiction; they listen to no reason. They are bodies of men assembled for action, not for consultation; their real objects are to prepare for some violent act, and to impress the Government with fear.—A government which can suffer them, no longer deserves its name, for it has abdicated its functions.

Upon the whole we may rest assured that the right of Public Meetings must, to be safe for the state and consistent with a representative government, be either temperately exercised from the good sense of the people themselves, or it must be placed by the legislature under wholesome and wise restraints.

If not abused, there can be no doubt that the right of Meeting is of great value to the people. Some reasoners who have a prejudice against it, and the late Mr. Canning was at the head of them, have argued that the mixed constitution of this country did not recognise any numerous body acting, unless in a corporate capacity. They have held corporations of all kinds, whether formally and nominally such, or only quasi corporations, that is, persons of a certain specified description, persons of a "defined caste," as Mr. Canning called it, as well entitled to meet, and as doing no harm by their combined proceedings. All others they conceived to be excluded. I confess I think this a somewhat fantastic refinement. No one can see much definition in the thirty thousand freeholders who have a right to throng the sheriff's court in the West Riding of Yorkshire; nor even any peculiar virtue in the assemblage of ten thousand persons in name and legal description, as well as in substance, corporators, the freemen of London. The genius of our constitution admits all men to much more important offices than attending public meetings, and admits them without any regard to class or caste. Did these reasoners never hear of a *tales de circumstantibus*—jurors chosen to make up the special jury pannel's deficiencies? These in practice are, it is true, generally taken from the common jury pannel; but by the letter of the ancient constitution they are to be chosen indiscriminately from the bystanders who happen to be in court at the time the cause comes on. Then who were the original voters for members of parliament and for most corporate officers in boroughs? All the inhabitants, without qualification; that is, every person dwelling in the several boroughs. We may rest assured that this fanciful theory rests neither upon any reasonable ground nor upon any learned view of our laws.

SECTION III.—*Judicial Functions.*

The most important department in every state is the administration of justice. It is, indeed, for this inestimable benefit that society is chiefly framed; and it is the price for which men are induced to give up a portion of their natural liberty when they place themselves under the restraints of regular government. As it would not be too much to affirm, that even the worst judicial system, under the most absolute despotism, is better than the lawless state of barbarous life, so it is certainly true that the judicial portion of the most free and enlightened state is the great zone which embraces and binds together the entire political edifice, indissolubly connecting its upper and lower portions; mitigating the evils endured by the humbler from the possessions and the power of the exalted classes; protecting the few from the oppressions of the many; cementing and consolidating the whole of the great social pyramid.

It is of great consequence to the people that they should have a share in so important a branch of the state. It is the nature of all democratic and of all mixed governments, both in ancient and in modern times, to confer this high privilege upon them. In Athens the judicial business was in their hands far too entirely; they formed the members of the great tribunals, excepting the Areopagus, before which all questions of civil or of criminal justice came. This system led to the greatest evils; it occasioned the most cruel oppression of those who had lost the popular favour; the most shameful escapes of the criminals whom the people liked. The arguments, or rather the topics of declamation used by the advocates, both when addressing the courts and when writing for parties who were nominally to defend themselves, are such as plainly prove that the pursuit of the truth was the last thing thought of in such trials. In Rome the people acted as *judices* or jurors, to assist the magistrates, who were also appointed by popular election. This was a far less exceptionable course of proceeding than the Athenian; and much less injustice both to individuals and to the public was wrought by it. In modern times all free states have adopted trial by Jury, generally in both civil and criminal cases; always in criminal.

It is not easy to overrate the importance of this function to the state, or the benefit which the people derive from the exercise of it. Many questions are far better determined by one or more judges; points of law, of course, must always be left to them; but mere questions of fact, too, are oftentimes better entrusted to their investigation. Sometimes an arbitrator is the best judge; and when a long and complicated investigation of facts, especially if these are in many parts mixed up with legal questions, is left to a single person of competent learning and experience, a far better trial is obtained than any judge or any Jury could afford. But in three classes of causes the use of Jury-trial is admirable, and all experience satisfies us of its virtue. *First*, where a question of conflicting evidence arises, nothing can be better than that several persons of different habits of mind and various capacities should discuss, sift, and decide it. *Secondly*, where an award of damages as a compensation for an injury received is to be made, the same diversity of the Jurors' minds and views gives the best security that a right amount will be fixed upon. *Thirdly*, when there is a party to be tried, or a right investigated, the government being the prosecutor, or some powerful person or corporation being the plaintiff, it is essential to liberty that judges named by the Crown, and always belonging to the same class with the powerful party, should not decide on the fate of the person or the cause; therefore the equals of the less powerful party are the only persons in whom this important office can be safely vested.

Such are the benefits of Jury-trial to the judicial system. To the people it is of a still further use. They are thus habituated to public business of the gravest and most important description. They become conversant in the laws by which their rights are defined, and their duties regulated. They learn the nature of the government under which they live, in its most essential branch. They act and observe under the superintendence and instruction of a virtuous, a learned, and an experienced functionary. Withdrawn from all the turmoil of the popular assembly, its violence, its rashness, its deafness to reason, its abnegation of fairness and candour, they bear a part in a solemn and important discussion which can only be conducted by rational measures and determined according

to the truth of the case alone. They are engaged in an inquiry where only truth is the object of pursuit, and all matters are disposed of on their real merits. The political education of the people is incalculably forwarded by this proceeding; their moral habits are much improved by it.

There is nothing more certain, too, that, unlike the other powers reserved in the people's hands, their judicial office is performed and all its precious benefits secured without any risk being run of evils. No mischief can ever ensue from it, as the price paid for so great advantages. If it be said that errors are unavoidably committed by Jurors into which professional judges would not fall, the answer is, that in all well-constructed judicial systems, means are provided for correcting these, or for obviating their effects. If it be alleged that an obstinate Juror may, in defiance of the truth, and in disregard of his oath, suffer the guilty to escape from party or from personal bias; it must, on the other hand, be borne in mind, that this is a small price to pay for the perfect security which a Jury affords to all men, even the humblest, against the ruin that power and its minions might bring upon them. As long as a Jury must be appealed to by the most powerful parties in the State in order to overwhelm an obnoxious individual, we may rest assured that there is little hazard of such a catastrophe destroying an innocent man. This is a real power, a solid influence, an efficacious check to misgovernment, placed in the hands of the people, and never likely to be abused.



